SPECIAL ITEM NUMBER 132-8 PURCHASE OF NEW EQUIPMENT

FSC CLASS 7010 – SYSTEM CONFIGURATION
End User Computers/Desktop Computers, Professional Workstations, Other System Configuration Equipment, NEC

FSC CLASS 7025 - INPUT/OUTPUT AND STORAGE DEVICES
Network Equipment
Storage Devices, including Magnetic Storage, Magnetic Tape Storage and Optical Disk Storage
Other Communications Equipment

FSC CLASS 7042 - MINI AND MICRO COMPUTER CONTROL DEVICES
Microcomputer Control Devices

FSC CLASS 6145 – WIRE AND CABLE, ELECTRICAL

FSC CLASS 5810 – COMMUNICATIONS SECURITY EQUIPMENT AND COMPONENTS

FSC CLASS 5820 - RADIO AND TELEVISION COMMUNICATION EQUIPMENT, EXCEPT AIRBORNE
Two-Way Radio Transmitters/Receivers/Antennas- Installation (FPDS Code N070) for Equipment Offered
- Installation (FPDS N070)
- Deinstallation (FPDS N070)
- Reinstallation (FPDS N070)

NOTE: Installation must be incidental to, in conjunction with and in direct support of the products sold under SIN 132-8 of this contract and cannot be purchased separately. If the construction, alteration or repair is segregable and exceeds $2,000, then the requirements of the Davis-Bacon Act apply. In applying the Davis-Bacon Act, ordering activies are required to incorporate wage rate determinations into orders, as applicable.

SPECIAL ITEM NUMBER 132-12 - EQUIPMENT MAINTENANCE (FPDS Code J070 - Maintenance and Repair Service)(Repair Parts/Spare Parts - See FSC Class for basic equipment)

- Maintenance
- Repair Service
- Repair Parts/Spare Parts

SIN 132-32 – TERM SOFTWARE LICENSES

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does <u>NOT</u> include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

FSC CLASS 7030 - INFORMATION TECHNOLOGY SOFTWARE: Large Scale Computers: Application Software; Microcomputers: Application Software

SIN 132-33 - PERPETUAL SOFTWARE LICENSES

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does <u>NOT</u> include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

FSC CLASS 7030 - INFORMATION TECHNOLOGY SOFTWARE: Large Scale Computers: Utility, Application and Communications Software; Microcomputers: Application and Utility Software

SPECIAL ITEM NUMBER 132-50 - TRAINING COURSES (FPDS Code U012)

SPECIAL ITEM NUMBER 132-52 - ELECTRONIC COMMERCE (EC) SERVICES

FPDS Code D304	Value Added Network Services (VANs)
FPDS Code D304	E-Mail Services
FPDS Code D304	Internet Access Services
FPDS Code D304	Navigation Services
FPDS Code D399	Other Data Transmission Services, Not Elsewhere Classified - Except "Voice" and Pager Services

Arrow Enterprise Computing Solutions, Inc.
7459 S Lima St.
Englewood, CO   80112
800-544-7674
Fax: 720-873-7520
www.alttech.com

Contract Number: GS-35F-0296R
Period Covered by Contract: January 28, 2005 through January 27, 2015

General Services Administration
Federal Acquisition Service

Products and ordering information in this Authorized FSS Information Technology Schedule Pricelist are also available on the GSA Advantage! System. Agencies can browse GSA Advantage! by accessing the Federal Supply Service's Home Page via the Internet at http://www.fss.gsa.gov/

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INFORMATION FOR ORDERING ACTIVITIES
APPLICABLE TO ALL SPECIAL ITEM NUMBERS

SPECIAL NOTICE TO AGENCIES: Small Business Participation

SBA strongly supports the participation of small business concerns in the Federal Acquisition Service. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service (www.gsaadvantage.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Acquisition Service Home Page (www.fss.gsa.gov) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

1.	GEOGRAPHIC SCOPE OF CONTRACT:

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

Offerors are requested to check one of the following boxes:
- [X]   The Geographic Scope of Contract will be domestic and overseas delivery.
- [ ]   The Geographic Scope of Contract will be overseas delivery only.
- [ ]   The Geographic Scope of Contract will be domestic delivery only.

2.	CONTRACTOR'S ORDERING ADDRESS AND PAYMENT INFORMATION:

Ordering Address: Payment Information:

Arrow Enterprise Computing Solutions, Inc.   Arrow Enterprise Computing Solutions, Inc.

GSA Order Administration   Department 382

7459 S. Lima St   Denver, CO   80291-0382

Englewood, CO   80112

Contractors are required to accept credit cards for payments equal to or less than the micro-purchase threshold for oral or written delivery orders. Credit cards will/will not be acceptable for payment above the micro-purchase threshold. In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number(s) can be used by ordering activities to obtain technical and/or ordering assistance:

800-544-7674

When Authorized Dealers are allowed by the Contractor to bill ordering activities and accept payment, the order and/or payment must be in the name of the Contractor, in care of the Authorized Dealer.

3. LIABILITY FOR INJURY OR DAMAGE

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

4. STATISTICAL DATA FOR GOVERNMENT ORDERING OFFICE COMPLETION OF STANDARD FORM 279:

> Block 9: G. Order/Modification Under Federal Schedule
> Block 16: Data Universal Numbering System (DUNS) Number: 829160865
> Block 30: Type of Contractor - B. Other Small Business (SINs 132-3, 132-32, 132-33, 132-52)
> C.   Large Business (SIN 132-8, 132-12)
> Block 31: Woman-Owned Small Business - No
> Block 36: Contractor's Taxpayer Identification Number (TIN): 11-2860574

4a.   CAGE Code: 5AH58

4b.   Contractor has registered with the Central Contractor Registration Database.

5. FOB DESTINATION

6. DELIVERY SCHEDULE

a.   TIME OF DELIVERY: The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

SPECIAL ITEM NUMBER	DELIVERY TIME (Days ARO)
132-8, 132-33,	30-45 Days
132-32, 132-12, 132-50, 132-52, 132-62	As Negotiated

b.   URGENT REQUIREMENTS: When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

7. DISCOUNTS: Prices shown are NET Prices; Basic Discounts have been deducted.

a.   Prompt Payment: Net 30 Days

b.   Novell Volume Pricing:

As additional purchases (products and maintenance) are made, the enrolled Customer and any sub-enrolled subsidiaries cumulatively qualify toward the next earned discount level:

$404,000   38% Discount (listed price in pricelist pages)

$2,500,000   43% Discount*

$5,000,000   48% Discount*

*Contact Arrow Enterprise Computing Solutions, Inc. for actual pricing.

c.   Government Educational Institutions receive the same discounts as all other Government customers. For Vericept products, special Educational pricing is offered. Contact Arrow Enterprise Computing Solutions, Inc. for more details.

8.   TRADE AGREEMENTS ACT OF 1979, as amended:

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

9.   STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING: Not Available

10.   Small Requirements: The minimum dollar value of orders to be issued is $1.

11.   MAXIMUM ORDER (All dollar amounts are exclusive of any discount for prompt payment.)

a.   The Maximum Order value for the following Special Item Numbers (SINs) is $500,000:

Special Item Number 132-8 - Purchase of Equipment
Special Item Number 132-12 – Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts
Special Item Number 132-32 – Term Software Licenses
Special Item Number 132-33 - Perpetual Software Licenses
Special Item Number 132-52 - Electronic Commerce (EC) Services

b.   The Maximum Order value for the following Special Item Numbers (SINs) is $25,000:

Special Item Number 132-50 - Training Courses

c.   The Maximum Order value for the following Special Item Numbers (SINs) is $1,000,000:

Special Item Number 132-62 – HSPD-12 Product and Service Components

12.   ORDERING PROCEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACTS

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

a.   FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

b.   FAR 8.405-2 Ordering procedures for services requiring a statement of work.

13.   FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS REQUIREMENTS: ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

13.1   FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):
Information Technology products under this Schedule that do not conform to Federal Information Processing

Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

13.2   FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS): Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Acquisition Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.

14.   CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2003)

(a) Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.

(b) Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.

(c) Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.

(d) Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.

(e) Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.

(f) Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.

(g) Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.

(h) Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.

(i) Government-Furnished Property: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.

(j) Availability of Funds: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of

appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.

(k)   Overtime: For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

15.   CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES: Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See 52.212-4)

16.   GSA ADVANTAGE!

GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:

(1)   Manufacturer;
(2)   Manufacturer's Part Number; and
(3)   Product categories.

Agencies can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is http://www.gsaadvantage.gov

17.   PURCHASE OF OPEN MARKET ITEMS

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. ODCs (Other Direct Costs) are not part of this contract and should be treated as open market purchases. Ordering Activities procuring open market items must follow FAR 8.402(f).

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if**-

(1)   All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

(2)   The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3)   The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4)   All clauses applicable to items not on the Federal Supply Schedule are included in the order.

18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

a.   For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

(1)   Time of delivery/installation quotations for individual orders;

(2)   Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.

(3)   Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b.   The above is not intended to encompass items not currently covered by the GSA Schedule contract.

19. OVERSEAS ACTIVITIES

The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated below:

None

Upon request of the Contractor, the ordering activity may provide the Contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

20. BLANKET PURCHASE AGREEMENTS (BPAs)

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

21. CONTRACTOR TEAM ARRANGEMENTS

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

22. INSTALLATION, DEINSTALLATION, REINSTALLATION

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction

work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds $2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8 or 132-9.

23.   SECTION 508 COMPLIANCE.

If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following: www.alttech.com

The EIT standard can be found at: www.Section508.gov/.

24.   PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order –

(a)   A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and

(b)   The following statement:

This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

25.   INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5)

(a)   The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b)   Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

(1)   For such period as the laws of the State in which this contract is to be performed prescribe; or

(2)   Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c)   The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

Exception: NetApp products listed on this schedule are covered by insurance that meets the requirements of FAR 52.228-5. **NetApp**'s insurance policy does not provide for notice of cancellation or of material changes to the agreement.

26.   SOFTWARE INTEROPERABILITY.

Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at http://www.core.gov.

27.   ADVANCE PAYMENTS

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324)

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (SPECIAL ITEM NUMBER 132-8)

1. MATERIAL AND WORKMANSHIP

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and BPAs, telephone orders are permissible.

3. TRANSPORTATION OF EQUIPMENT

FOB DESTINATION. Prices cover equipment delivery to destination, for any location within the geographic scope of this contract.

4. INSTALLATION AND TECHNICAL SERVICES

a. INSTALLATION. When the equipment provided under this contract is not normally self-installable, the Contractor's technical personnel shall be available to the ordering activity, at the ordering activity's location, to install the equipment and to train ordering activity personnel in the use and maintenance of the equipment.

NetApp:

Installation and training services provided by Contractor shall be made available to the ordering activity at the prices designated in the price schedule, subject to **NetApp**'s standard commercial terms and conditions for Professional Services, provided in "**NetApp** *Professional Services Standard Terms and Conditions – North America*" available at **http://www.netapp.com/us/how-to-buy/stc.html**.

b. **INSTALLATION, DEINSTALLATION, REINSTALLATION.** The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds $2,000, then the requirements of the Davis-Bacon Act applies. The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-

Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

c.   OPERATING AND MAINTENANCE MANUALS. The Contractor shall furnish the ordering activity with one (1) copy of all operating and maintenance manuals which are normally provided with the equipment being purchased.

5.   INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any equipment that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming equipment at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

NetApp:

Contractor shall only tender for acceptance those items that substantially conform to **NetApp**'s then-current published specifications and all items shipped shall be deemed accepted upon delivery. Items shipped may be repaired as required or exchanged for identical product if repair cannot be reasonably implemented during the applicable warranty period.

6.   WARRANTY

a.   Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the contract's commercial pricelist will apply to this contract.

NetApp:

Contractor shall provide **NetApp's** standard commercial warranty for hardware and software as indicated in "*NetApp Standard Terms and Conditions of Sale – North America*," available at **http://www.netapp.com/us/how-to-buy/stc.html**. Contractor notes that as a standard practice, **NetApp** passes along the manufacturer's warranty for any third-party products sold in conjunction with **NetApp** products.

Fortinet:

90 Days Return to Factory warranty

IBM:

Base warranty which covers "Limited Parts and Labor." Servicepacs are available for a charge that uplift the base warranty to either 9X5 with 4-hour response, or 24X7 with 4-hour response.

Components generally carry the same warranty as the base server. So, the components that go into a system when it is first shipped (or will go in it if the system has not been integrated) carry the same warranty as the base server. Components added later to a system carry whatever remaining warranty exists for that specific server. So if more memory is purchased 2 years after initial installation for a box with a 36-month warranty, the memory will in effect have a 1-year warranty that will expire when the base system goes off warranty.

b.   The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c.   Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

d. If inspection and repair of defective equipment under this warranty will be performed at the Contractor's plant, the address is as follows:

Fortinet: 1090 Kifer Road Sunnyvale, CA 94086

7.	PURCHASE PRICE FOR ORDERED EQUIPMENT

The purchase price that the ordering activity will be charged will be the ordering activity purchase price in effect at the time of order placement, or the ordering activity purchase price in effect on the installation date (or delivery date when installation is not applicable), whichever is less.

8.	RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

9.	TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an ordering activity determines that Information Technology equipment will be replaced, the ordering activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).

TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE, REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS FOR GOVERNMENT-OWNED GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (AFTER EXPIRATION OF GUARANTEE/WARRANTY PROVISIONS AND/OR WHEN REQUIRED SERVICE IS NOT COVERED BY GUARANTEE/WARRANTY PROVISIONS) AND FOR LEASED EQUIPMENT (SPECIAL ITEM NUMBER 132-12)

1.   SERVICE AREAS

a.   The maintenance and repair service rates listed herein are applicable to any ordering activity location within any mile radius of the Contractor's service points. If any additional charge is to apply because of the greater distance from the Contractor's service locations, the mileage rate or other distance factor shall be stated in paragraphs 7.d and 8.d of this Special Item Number 132-12.

b.   When repair services cannot be performed at the ordering activity installation site, the repair services will be performed at the Contractor's plant(s) listed below:

Arrow Enterprise Computing Solutions, Inc.

7459 S Lima St.

Englewood, CO   80112

2.   MAINTENANCE ORDER

a.   Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 132-12). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor.

b.   The Contractor shall honor orders for maintenance for the duration of the contract period or a lessor period of time, for the equipment shown in the pricelist. Maintenance service shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of equipment. Orders for maintenance service shall not extend beyond the end of the contract period.

c.   Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) calendar days from the date on the notification. However, the ordering activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.

d.   Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.

e.   Cross-year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month, fiscal year period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

f.   Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of maintenance service, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

NetApp:

Maintenance services on **NetApp** products shall be made available by Contractor to the ordering activity subject to the additional terms and conditions outlined in **NetApp**'s standard commercial terms and conditions for Support Services, provided in "*NetApp Support Offering Standard Terms and Conditions – North America*" available at **http://www.netapp.com/us/how-to-buy/stc.html.**

3. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS

a.   Agencies may use written orders, EDI orders, credit card orders, blanket purchase agreements (BPAs), or small order procedures for ordering repair service and/or repair parts/spare parts under this contract. Orders for repair service shall not extend beyond the end of the contract period.

b.   When repair service is ordered, only one chargeable repairman shall be dispatched to perform repair service, unless the ordering activity agrees, in advance, that additional repair personnel are required to effect repairs.

4.   LOSS OR DAMAGE

When the Contractor removes equipment to his establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the equipment is removed from the ordering activity installation, until the equipment is returned to such installation.

5.   SCOPE

a.   The Contractor shall provide maintenance for all equipment listed herein, as requested by the ordering activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule.

b.   Equipment placed under maintenance service shall be in good operating condition.

(1)   In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the Contractor, without charge to the ordering activity.

(2)   Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the Contractor, if the equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.

(3)   If the equipment was not under the Contractor's responsibility, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).

6.   RESPONSIBILITIES OF THE ORDERING ACTIVITY

a.   Ordering activity personnel shall not perform maintenance or attempt repairs to equipment while such equipment is under the purview of a maintenance order, unless agreed to by the Contractor.

b.   Subject to security regulations, the ordering activity shall permit access to the equipment which is to be maintained or repaired.

7.   RESPONSIBILITIES OF THE CONTRACTOR

For equipment not covered by a maintenance contract or warranty, the Contractor's repair service personnel shall complete repairs as soon as possible after notification by the ordering activity that service is required. Within the service areas, this repair service should normally be done within 4 hours after notification.

NetApp:

Response and restore time for repair purchased by an Ordering Activity for equipment not covered under a maintenance contract or warranty shall be subject to negotiation between the Ordering Activity and Contractor.

8.   MAINTENANCE RATE PROVISIONS

a.   The Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the ordering activity.

b.   REGULAR HOURS

The basic monthly rate for each make and model of equipment shall entitle the ordering activity to maintenance service during a mutually agreed upon nine (9) hour principal period of maintenance, Monday through Friday, exclusive of holidays observed at the ordering activity location.

c.   AFTER HOURS

Should the ordering activity require that maintenance be performed outside of Regular Hours, charges for such maintenance, if any, will be specified in the pricelist. Periods of less than one hour will be prorated to the nearest quarter hour.

d.   TRAVEL AND TRANSPORTATION

If any charge is to apply, over and above the regular maintenance rates, because of the distance between the ordering activity location and the Contractor's service area, the charge will be: None

9.   REPAIR PARTS/SPARE PARTS RATE PROVISIONS

All parts, furnished as spares or as repair parts in connection with the repair of equipment, unless otherwise indicated in this pricelist, shall be new, standard parts manufactured by the equipment manufacturer.

NetApp:

Repair services shall be made available by Contractor to the ordering activity subject to **NetApp**'s standard commercial terms and conditions for Support Services, provided in "***NetApp*** *Support Offering Standard Terms and Conditions – North America*" available at **http://www.netapp.com/us/how-to-buy/stc.html.**

10.	INVOICES AND PAYMENTS

a.   Maintenance Service

(1)   Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

(2)   Payment for maintenance service of less than one month's duration shall be prorated at 1/30th of the monthly rate for each calendar day.

b.   Repair Service and Repair Parts/Spare Parts

Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of work. Payment under blanket purchase agreements will be made quarterly or monthly, except where cash payment procedures are used. Invoices shall be submitted separately to each ordering activity office ordering services under the contract. The cost of repair parts shall be shown as a separate item on the invoice.

NetApp Maintenance Pricing

NetApp offers a wide variety of maintenance plans. NetApp's maintenance offerings are frequently referred to as "SupportEdge" offerings. Maintenance may be purchased for hardware (HW), software (SW), installation, and/or non-returnable disk (NRD). The pricing table below represents all possible maintenance combinations. There are more than 30 maintenance offerings to meet any customer's requirements.

Hardware maintenance is available with either parts delivery to the customer's location, or on-site parts with technician service at the customer's location. Subject to availability, parts delivery is offered as either 4 hours 7x24x365 or Next Business Day (NBD). Subject to availability, on-site service is offered with either 2 hour 24x7x365, 4 hour 24x7x365, or Next Business Day service.

Software maintenance allows customers to obtain patches, upgrades, and new releases of software at no additional cost during the maintenance period.

NetApp offers a Non-Returnable Disk (NRD) maintenance plan.   NRD may be purchased in conjunction with any maintenance offering, or as a stand-alone supplement to NetApp's standard warranty. When NRD is purchased, NetApp will replace a failed disk without requiring the customer to return the failed disk to NetApp.

With the purchase of installation, NetApp will install and connect the equipment purchased to the customer's network and ensure all the ordered software is enabled. This is a one-time charge.

All maintenance pricing is directly calculated based upon the list price of the equipment that is being covered using the percentages shown in the table below. The maintenance pricing will change as the equipment configuration changes, or the maintenance plan is changed.

The pricing shown in the table below is the percentage charged for 12 months of each service, with the exception of installation which is a one-time charge. Many services use more than one percentage to arrive at the maintenance price. For example, when a service includes HW, SW, and installation, the HW percentage will be applied to the applicable HW components of the quote, the SW percentage will be applied to the relevant SW components, etc. Installation charges are calculated on the hardware list price. NRD charges are calculated on the disk drive list price. The NetApp HW calculations do not include any cost for "minor" components such as power cords, cables, or equipment cabinets.

NetApp's maintenance may be purchased in monthly increments, and the annual percentages shown in the table below will be prorated according to the number of months being purchased.

Network Appliance, Inc. Hardware Maintenance, Software Maintenance, and Installation Pricing

Part Number	Description	Datafort & Lifetime Key Mgmt.	Small Capacity Systems Pricing - Note 1, 2, 3, 4, 5	Medium/Large Capacity Systems Pricing - Note 1, 2, 3, 4, 5
CS-A2-4D	SupportEdge Standard w/ 4hr Parts Del	Note 56	Note 6	Note 6
CS-A2-4R	SupportEdge Standard Replace 4hr	Note 57	Note 7	Note 7
CS-A2-INST-4D	SupportEdge Standard w/ Inst 4hrPartsDel	Note 58	Note 8	Note 9
CS-A2-INST-4R	SupportEdge Standard Replace 4hr,Install	Note 59	Note 10	Note 11
CS-A2-INST-NBR	SupportEdge Standard Replace NBD,Install	Note 60	Note 12	Note 13
CS-A2-NBR	SupportEdge Standard Replace NBD	Note 61	Note 14	Note 14
CS-EXTENDED-WTY	Extended Warranty Services	3%	3.0%	3.0%
CS-EXTENDED-WTY-RENEWAL	HW Support,Ext.Warranty,NBD Delivery,Renewal	6%	6.0%	6.0%
CS-N-INST	NetApp Initial Installation	Note 84	Note 85	Note 86
CS-N-INST-SSP	NetApp Installation and SW Subscription Plan	Note 74	Note 39	Note 40
CS-NRD-FEE	Non Returnable Disk Fee	N/A	4.0%	4.0%
CS-N-SSP	NetApp SW Subscription Plan	Note 87	Note 87	Note 87
CS-N-SSP-NBD	NetApp NBD Parts Delivery and SW Subscription	Note 54	Note 54	Note 54
CS-O-2HR	SupportEdge Premium 7x24 2hr Onsite	Note 62	Note 15	Note 16
CS-O-4HR	SupportEdge Premium 7x24 4hr Onsite	Note 63	Note 17	Note 18
CS-O-NBD	SupportEdge Premium Next Bus Day Onsite	Note 64	Note 19	Note 20
CS-O2-NOINSTALL-2HR	SupportEdge Premium 2hr Onsite, w/o Install	Note 88	Note 89	Note 89
CS-O2-NOINSTALL-4HR	SupportEdge Premium 4hr Onsite, w/o Install	Note 90	Note 91	Note 91
CS-O2-NOINSTALL-NBD	SupportEdge Premium NBD Onsite, w/o Install	Note 92	Note 93	Note 93
CS-R-NRD-FEE	Non Returnable Disk Fee,Renewal	N/A	4.0%	4.0%
CS-S-2R	2hr Parts Replace HW Support	Note 94	Note 95	Note 95
CS-S-2R-INST	2hr Parts Replace and Installation	Note 65	Note 21	Note 22
CS-S-4D	4hr Parts Delivery HW Support	Note 96	Note 97	Note 97
CS-S-4D-INST	4hr Parts Delivery and Installation	Note 66	Note 23	Note 24
CS-S-4R	4hr Parts Replace HW Support	Note 98	Note 99	Note 99
CS-S-4R-INST	4hr Parts Replace and Installation	Note 67	Note 25	Note 26
CS-SEC-2D	SE Secure,7x24,2hr Parts Delivery	Note 68	Note 27	Note 28
CS-SEC-2HR	SupportEdge Secure 7x24 2hr Onsite	Note 69	Note 29	Note 30
CS-SEC-4D	SE Secure,7x24,4hr Parts Delivery	Note 70	Note 31	Note 32
CS-SEC-4HR	SupportEdge Secure 7x24 4hr Onsite	Note 71	Note 33	Note 34
CS-SEC-NBD	SupportEdge Secure Next Bus Day Onsite	Note 72	Note 35	Note 36
CS-SEC-NBDD	SE Secure,Next Bus Day Parts Delivery	Note 73	Note 37	Note 38
CS-S-INST	SupportEdge Initial Installation	Note 84	Note 85	Note 86
CS-S-INST-SSP	Installation and SW Subscription Plan	Note 74	Note 39	Note 40
CS-S-INST-SSP-2R	2hr Parts Replace Install and SW Subs	Note 75	Note 41	Note 42
CS-S-INST-SSP-4D	4hr Parts Delivery Install and SW Subs	Note 76	Note 43	Note 44
CS-S-INST-SSP-4R	4hr Parts Replace Install and SW Subs	Note 77	Note 45	Note 46
CS-S-INST-SSP-NBR	NBD Parts Replace Install and SW Subs	Note 78	Note 47	Note 48
CS-S-NBR	NBD Parts Replace HW Support	Note 100	Note 101	Note 101
CS-S-NBR-INST	NBD Parts Replace and Installation	Note 79	Note 49	Note 50
CS-S-SSP	SW Subscription Plan	12%	12.0%	12.0%
CS-S-SSP-2R	2hr Parts Replace and SW Subscription	Note 80	Note 51	Note 51

CS-S-SSP-4D	4hr Parts Delivery and SW Subscription	Note 81	Note 52	Note 52
CS-S-SSP-4R	4hr Parts Replace and SW Subscription	Note 82	Note 53	Note 53
CS-S-SSP-NBD	NBD Parts Delivery and SW Subscription	Note 54	Note 54	Note 54
CS-S-SSP-NBR	NBD Parts Replace and SW Subscription	Note 83	Note 55	Note 55

POS (Point-of-Sale) indicates the maint. is purchased with the equipment.

NOTES:

1. All maintenance percentages are annual, except installation, which is each.
   Maintenance can be prorated on a monthly basis based on the annual percentage.

2. HW renewal maintenance after Year 3 is an additional 3% more than the years 4-5 POS percentages shown below.

3. The maintenance percentages are applied to the applicable portions of each unique configuration.

4. Maintenance pricing is directly related to the level(s) of service selected (e.g. 4 Hour vs next Business Day),
   the number of months purchased, and the specific hardware/software being covered.

5. The maximum percentage is shown for upgrades. The actual percentage is the difference between the current service
   HW percentage and the new upgraded hardware service percentage.

6. HW support is 1.68% per year for years 1-3, 4.68% per year for years 4-5 at POS, and SW support is 12% per year.

7. HW support is 3.36% per year for years 1-3, 6.36% per year for years 4-5 at POS, and SW support is 12% per year.

8. HW support is 1.68% per year for years 1-3, 4.68% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

9. HW support is 1.68% per year for years 1-3, 4.68% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

10. HW support is 3.36% per year for years 1-3, 6.36% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

11. HW support is 3.36% per year for years 1-3, 6.36% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

12. HW support is 2.69% per year for years 1-3, 5.69% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

13. HW support is 2.69% per year for years 1-3, 5.69% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

14. HW support is 2.69% per year for years 1-3, 5.69% per year for years 4-5 at POS, and SW support is 12% per year.

15. HW support is 8.66% per year for years 1-3, 11.66% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

16. HW support is 8.66% per year for years 1-3, 11.66% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

17. HW support is 6.25% per year for years 1-3, 9.25% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

18. HW support is 6.25% per year for years 1-3, 9.25% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

19. HW support is 5.58% per year for years 1-3, 8.58% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

20. HW support is 5.58% per year for years 1-3, 8.58% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

21. HW support is 5.78% per year for years 1-3, 8.78% per year for years 4-5 at POS, and installation is 6% one-time.

22. HW support is 5.78% per year for years 1-3, 8.78% per year for years 4-5 at POS, and installation is 3% one-time.

23. HW support is 1.68% per year for years 1-3, 4.68% per year for years 4-5 at POS, and installation is 6% one-time.

24. HW support is 1.68% per year for years 1-3, 4.68% per year for years 4-5 at POS, and installation is 3% one-time.

25. HW support is 3.36% per year for years 1-3, 6.36% per year for years 4-5 at POS, and installation is 6% one-time.

26. HW support is 3.36% per year for years 1-3, 6.36% per year for years 4-5 at POS, and installation is 3% one-time.

27. HW support is 5.95% per year for years 1-3, 8.95% per year for years 4-5 at POS, and SW support is 12% per year.

28. HW support is 5.95% per year for years 1-3, 8.95% per year for years 4-5 at POS, and SW support is 12% per year.

29. HW support is 10.63% per year for years 1-3, 13.63% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

30. HW support is 10.63% per year for years 1-3, 13.63% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

31. HW support is 4.25% per year for years 1-3, 7.25% per year for years 4-5 at POS, and SW support is 12% per year.

32. HW support is 4.25% per year for years 1-3, 7.25% per year for years 4-5 at POS, and SW support is 12% per year.

33. HW support is 7.65% per year for years 1-3, 10.65% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

34. HW support is 7.65% per year for years 1-3, 10.65% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time

35. HW support is 6.8% per year for years 1-3, 9.8% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

36. HW support is 6.8% per year for years 1-3, 9.8% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

37. HW support is 3.83% per year for years 1-3, 6.83% per year for years 4-5 at POS, and SW support is 12% per year.

38. HW support is 3.83% per year for years 1-3, 6.83% per year for years 4-5 at POS, and SW support is 12% per year.

39. HW support is 3% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

40. HW support is 3% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

41. HW support is 5.78% per year for years 1-3, 8.78% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

42. HW support is 5.78% per year for years 1-3, 8.78% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

43. HW support is 1.68% per year for years 1-3, 4.68% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

44. HW support is 1.68% per year for years 1-3, 4.68% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

45. HW support is 3.36% per year for years 1-3, 6.36% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

46. HW support is 3.36% per year for years 1-3, 6.36% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

47. HW support is 2.69% per year for years 1-3, 5.69% per year for years 4-5 at POS, SW support is 12% per year, and installation is 6% one-time.

48. HW support is 2.69% per year for years 1-3, 5.69% per year for years 4-5 at POS, SW support is 12% per year, and installation is 3% one-time.

49. HW support is 2.69% per year for years 1-3, 5.69% per year for years 4-5 at POS, and installation is 6% one-time.

50. HW support is 2.69% per year for years 1-3, 5.69% per year for years 4-5 at POS, and installation is 3% one-time.

51. HW support is 5.78% per year for years 1-3, 8.78% per year for years 4-5 at POS, and SW support is 12% per year.

52. HW support is 1.68% per year for years 1-3, 4.68% per year for years 4-5 at POS, and SW support is 12% per year.

53. HW support is 3.36% per year for years 1-3, 6.36% per year for years 4-5 at POS, and SW support is 12% per year.

54. HW support is 3% per year for years 4-5 at POS and SW support is 12% per year.

55. HW support is 2.69% per year for years 1-3, 5.69% per year for years 4-5 at POS, and SW support is 12% per year.

56. HW support is 8% for per year for years 1-3, 11% per year for years 4-5 at POS, and SW support is 12% per year.

57. HW support is 12% per year for years 1-3, 15% per year for years 4-5 at POS, and SW support is 12% per year.

58. HW support is 8% per year for years 1-3, 11% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

59. HW support is 12% per year for years 1-3, 15% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

60. HW support is 10.4% per year for years 1-3, 13.4% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

61. HW support is 10.4% per year for years 1-3, 13.4% per year for years 4-5 at POS, and SW support is 12% per year.

62. HW support is 19.2% per year for years 1-3, 22.2% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

63. HW support is 16.7% per year for years 1-3, 19.7% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

64. HW support is 15% per year for years 1-3, 18% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

65. HW support is 14.4% per year for years 1-3, 17.4% per year for years 4-5 at POS, and installation is 10% one-time.

66. HW support is 8% per year for years 1-3, 11% per year for years 4-5 at POS, and installation is 10% one-time.

67. HW support is 12% per year for years 1-3, 15% per year for years 4-5 at POS, and installation is 10% one-time.

68. HW support is 14% per year for years 1-3, 17% per year for years 4-5 at POS, and SW support is 12% per year.

69. HW support is 23% per year for years 1-3, 26% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

70. HW support is 12% per year for years 1-3, 15% per year for years 4-5 at POS, and SW support is 12% per year.

71. HW support is 20% per year for years 1-3, 23% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

72. HW support is 18% per year for years 1-3, 21% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

73. HW support is 10% per year for years 1-3, 13% per year for years 4-5 at POS, and SW support is 12% per year.

74. HW support is 3% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

75. HW support is 14.4% per year for years 1-3, 17.4% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% per year

76. HW support is 8% per year for years 1-3, 11% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

77. HW support is 12% per year for years 1-3, 15% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

78. HW support is 10.4% per year for years 1-3, 13.4% per year for years 4-5 at POS, SW support is 12% per year, and installation is 10% one-time.

79. HW support is 10.4% per year for years 1-4, 13.4% per year for years 4-5 at POS, and installation is 10% one-time.

80. HW support is 14.4% per year for years 1-3, 17.4% per year for years 4-5 at POS, and SW support is 12% per year.

81. HW support is 8% per year for years 1-3, 11% per year for years 4-5 at POS, and SW support is 12% per year.

82. HW support is 12% per year for years 1-3, 15% per year for years 4-5 at POS, and SW support is 12% per year.

83. HW support is 10.4% per year for years 1-3, 13.4% per year for years 4-5 at POS, and SW support is 12% per year.

84. HW support is 3% per year for years 4-5 at POS and installation is 10% one-time

85. HW support is 3% per year for years 4-5 at POS and installation is 6% one-time.

86. HW support is 3% per year for years 4-5 at POS and installation is 3% one-time.

87. HW support is 3% per year for years 4-5 at POS and SW support is 12% per year.

88. HW support is 19.2% per year for years 1-3, 22.2% per year for years 4-5 at POS, SW suupport is 12% per year.

89. HW support is 8.66% per year for years 1-3, 11.66% per year for years 4-5 at POS, SW support is 12% per year.

90. HW support is 16.7% per year for years 1-3, 19.7% per year for years 4-5 at POS, SW suupport is 12% per year.

91. HW support is 6.25% per year for years 1-3, 9.25% per year for years 4-5 at POS, SW support is 12% per year.

92. HW support is 15% per year for years 1-3, 18% per year for years 4-5 at POS, SW suupport is 12% per year.

93. HW support is 5.58% per year for years 1-3, 8.58% per year for years 4-5 at POS, SW support is 12% per year.

94. HW support is 14.4% per year for years 1-3 and 17.4% per year for years 4-5 at POS.

95. HW support is 5.78% per year for years 1-3 and 8.78% per year for years 4-5 at POS.

96. HW support is 8% per year for years 1-3 and 11% per year for years 4-5 at POS.

97. HW support is 1.68% per year for Years 1-3 and 4.68% per year for years 4-5 at POS.

98. HW support 12% per year for years 1-3 and 15% per year for years 4-5 at POS.

99. HW support is 3.36% per year for years 1-3 and 6.36% per year for years 4-5 at POS.

100. HW support is 10.4% for years 1-3 and 13.4% for years 4-5 at POS.

101. HW Support is 2.69% for years 1-3 and 5.69% for years 4-5 at POS.

Part Number	Description	Datafort & Lifetime Key Mgmt.	Small Capacity Systems Pricing - Note 1, 2, 3, 4, 5	Medium/Large Capacity Systems Pricing - Note 1, 2, 3, 4, 5
CS-UPL-A2-4D	Upgrade to SupportEdge Standard 4hr Parts Del	8.00%	1.68%	1.68%
CS-UPL-A2-4R	Uplift to Standard Replace 4hr	12.00%	3.36%	3.36%
CS-UPL-A2-NBDR	Uplift to Standard Replace Next Bus Day	10.40%	2.69%	2.69%
CS-UPL-O2-2HR	Upgrade to SupportEdge Premium 2hr	19.20%	8.66%	8.66%
CS-UPL-O2-4HR	Upgrade to SupportEdge Premium 4hr	16.70%	6.25%	6.25%
CS-UPL-O2-NBD	Upgrade to SupportEdge Premium NBD	15.00%	5.58%	5.58%

CS-UPL-S-2R	Upgrade to 2hr Parts Replace	14.40%	5.78%	5.78%
CS-UPL-S-4D	Upgrade to 4hr Parts Delivery	8.00%	1.68%	1.68%
CS-UPL-S-4R	Upgrade to 4hr Parts Replace	12.00%	3.36%	3.36%
CS-UPL-SEC-2D	Upgrade to SupportEdge Secure 2hr Delivery	14.00%	5.95%	5.95%
CS-UPL-SEC-2HR	Upgrade to SupportEdge Secure 2hr Onsite	23.00%	10.63%	10.63%
CS-UPL-SEC-4D	Upgrade to SupportEdge Secure 4hr Delivery	12.00%	4.25%	4.25%
CS-UPL-SEC-4HR	Upgrade to SupportEdge Secure 4hr Onsite	20.00%	7.65%	7.65%
CS-UPL-SEC-NBD	Upgrade to SupportEdge Secure NBD Onsite	18.00%	6.80%	6.80%
CS-UPL-SEC-NBDD	Upgrade to SupportEdge Secure NBD Delivery	10.00%	3.83%	3.83%
CS-UPL-S-NBR	Upgrade to NBD Parts Replace	10.40%	2.69%	2.69%

TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), AND PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1.   INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

NetApp:

Contractor shall only tender for acceptance those items that substantially conform to **NetApp**'s then-current published specifications and items shipped shall be deemed accepted upon delivery. Items shipped may be exchanged or repaired as required during the applicable **NetApp** warranty period.

Websense

Prior to Purchase, Websense makes no-charge evaluation licenses available. Once purchased, all products are deemed accepted upon delivery of the activation key.

2.   GUARANTEE/WARRANTY

a.   Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

NetApp:

All **NetApp** software licenses provided by Contractor are subject to **NetApp**'s Standard End User License Agreement, attached to this Agreement. The warranty provisions are exceprted below.

> "**NetApp** warrants that the Software, in the form originally licensed or downloaded by Ordering activity, and under normal use and conditions, will materially conform to then-current Documentation, and its media will be free from defects in workmanship, for a period of ninety (90) days from the earlier of ordering activity's receipt of the Software or the date of delivery of the Software to Ordering activity. This warranty covers only problems that are reproducible and verifiable, and does not cover software, or other items or any services provided by any persons other than **NetApp** or its authorized resellers and agents. Maintenance and support, if any, are governed by a separate agreement. **NetApp** does not provide support or maintenance services for software acquired from a party other than **NetApp**. Ordering activity must obtain support or maintenance services for third party software from the third party licensor or its third party representatives. Software which has been abused, misused, damaged in transport, modified, or subjected to unauthorized use or installation, as determined by **NetApp**, shall void this warranty. **NetApp**'s sole obligation and ordering activity's exclusive remedy under the limited warranties above shall be replacement of the Software provided that ordering activity return the Software to **NetApp** with a copy of ordering activity's receipt or other such acceptable proof of purchase.

> **EXCEPT FOR THE LIMITED WARRANTIES ABOVE, NETAPP AND ITS LICENSORS, DISTRIBUTORS AND RESELLERS MAKE NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE SOFTWARE AND EVALUATION SOFTWARE. NETAPP AND ITS LICENSORS', DISTRIBUTORS' AND RESELLERS' LIABILITY WITH RESPECT TO THE SOFTWARE UNDER ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY**

IS LIMITED EXCLUSIVELY TO SOFTWARE REPLACEMENT. THE SOFTWARE, EVALUATION SOFTWARE AND THE ACCOMPANYING DOCUMENTATION ARE PROVIDED WITHOUT THE WARRANTIES OF TITLE, ACCURACY, QUIET ENJOYMENT, CORRESPONDENCE TO DESCRIPTION, NONINFRINGEMENT, OR WARRANTY THAT THE SOFTWARE IS ERROR-FREE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OF IMPLIED WARRANTIES; THESE LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY.

Fortinet

One Year warranty

BlueCoat

Hardware Warranty – Product Warranty. The warranty period for hardware is (12) twelve months and for software is (90) ninety days from hipment in accordance with Vendor's standard warranty policy for the applicable Products. Any third party products provided under this Agreement shall be subject exclusively to the manufacturers' warranty for such products. If the Product fails during the warranty period to conform to Vendor's specifications, Distributor shall notify Vendor, and Vendor will repair or replace the Product in accordance with the applicable warranty return procedures.

Software Warranty – Product Warranty. The warranty period for hardware is (12) months and for software is (90) days from shipment in accordance with Vendor's standard warranty policy for the applicable Products. Any third party products provided under this Agreement shall be subject exclusively to the warranty period to conform to Vendor's specifications, Distributor shall notify Vendor, and Vendor will repair or replace the product in accordance with the applicable warranty return procedures.

Warranty Restrictions – The hardware and software warranties do no apply if the Product:

- The warranties exclude damange or failure resulting from abuse, misuse, alteration, unauthorized modification, acts of nature or disaster, or unauthorized repair or installation.

PKWARE, INC

Contractor warrents, for a period of ninety (90) days following ordering activity's receipt of the Software that the Software will operate substantially in conformance with Contractor's current published documentation and specifications for such Software ("Warranty Period"). If at any time during the Warranty Period, Contractor or the ordering activity discovers a defect, or error in the Software or a failure to conform to the provisions of the foregoing warranty, Contractor will correct such defect, error or non-conformity by, among other things, supplying the ordering activity with such corrective codes and making such addition, modification, replacement or adjustment as may be necessary to keep the Software operating in conformity with the warranties herein. In the event that Contractor is unable to correct such defect, error or non-conformity, Contractor shall refund to the ordering activity all the fees paid by the ordering activity for the Software and the associated maintenance and support and the license for such installation of the Software would terminate.

WEBSENSE

Limited Warranty.

For the Subscription Term, Websense warrants that the Products will operate in substantial conformance with the then-current Websense published documentation under normal use. Websense does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Subscriber's requirements, (iii) operate without interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; or (B) data contained in te Databases will (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate.

Websense will use reasonable efforts to remedy any significant non-conformance in the Products which is reported to Websense and that Websense can reasonably identify and confirm. Websense at its discretion will repair or replace any such non-conforming or defective Products, or refund a pro-rate portion of the unused Subscription Fees paid for the remainder of the then-current term. This paragraph sets forth Subscriber's sole and exclusive remedy and Websense's entire liability for any breach of warranty or other duty related to the Products. Any unauthorized modification of the Products, tampering with the Products, use of the Products inconsistent with the accompanying documentation or related breach of this Agreement voids the warranty. EXCEPT AS EXPLICITLY STATED AND TO THE EXTENT ALLOWED BY LAW, THERE ARE NO OTHER WARRANTIES, EXPRESS

OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS.

b.   The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

Bluecoat: Contractor does not warrant merchantability or fitness for a particular purpose.
Websense: Contractor does not warrant merchantability or fitness for a particular purpose.

c.   Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

NETAPP

Limitaiton of Liability: **THE TOTAL LIABILITY OF NETAPP, ITS DISTRIBUTORS AND RESELLERS FOR ANY DAMAGE OR CLAIM ARISING FROM USE OF THE SOFTWARE OR THE ACCOMPANYING DOCUMENTATION SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE OR US$100.00, WHICHEVER IS GREATER. NETAPP AND ITS DISTRIBUTORS AND RESELLERS ARE NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES; LOST OR CORRUPTED DATA, LOSS OF PROFITS, SAVINGS, OR REVENUES; PROCUREMENT OF SUBSTITUTE GOODS, INTERRUPTION OF BUSINESS, OR FOR ANY OCCURRENCE BEYOND THEIR CONTROL, RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA. IN NO EVENT SHALL NETAPP'S LICENSORS BE LIABLE FOR ANY DAMAGES OF ANY KIND INCLUDING DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (WHICH SHALL INCLUDE WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES."**

Bluecoat: Contractor is not liable to any party for consequential damages for any reason.

Websense:

Limitation of Liability: **WEBSENSE, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF OR RELATED TO THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO CLAIMS FOR LOSS OF DATA, GOODWILL, OPPORTUNITY, REVENUE, PROFITS, OR USE OF THE PRODUCTS, INTERRUPTION IN USE OF AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF WEBSENSE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL WEBSENSE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY SUBSCRIBER TO WEBSENSE FOR THE APPLICABLE PRODUCTS OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS THAT DIRECTLY CAUSED THE LIABILITY.**

3.	TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number for the purpose of providing user assistance and guidance in the implementation of the software.

NetApp: For assistance and guidance regarding implementation of the software, please see Contractor or the authorized **NetApp** partner from which the software was purchased. Technical support for an ordering activity that has purchased **NetApp** support can be reached at 888-4**NETAPP** 24 hours per day, 7 days per week, 365 days per year so long as the product is under warrantee or the ordering entity has purchased support services.

Bluecoat: 866-36-BCOAT 8am to 5pm (Pacific Time). Technical Support is subject to the purchase of a support services agreement.

Websense: 858-458-2940 – 5:00 A.M. – 5:00 P.M. Pacific Time.

PKWARE: 414-289-9788 8 a.m. through 6 p.m. (Central Time)

Contractor's Technical Services Definitions:

"Error Condition" means any demonstrable, reproducible defect, program error, or other non-conformance of the Software with its documentation caused solely by errors or defects in the code of the Software.

"New Version" means a complete replacement of the executable code of the Software in machine-readable form that provides significant new features or functions. A New Version may incorporate one or more enhancements and includes only such enhancements that change the version number immediately to the left of the decimal point. Changes to the version number are made solely at Contractor's discretion.

"New Release" means a partial or compelte replacement of the executable code of the Software in machine-readsable form, which may provide new features or functions. A New Release may incorporate some or no enhancements. And includes only such alterations that change the release number to the immediate right of the decimal point. Changes to the release number are made solely at Contractor's discretion.

"Modification" means a partial or complete replacement of the executable code of the Software in machine-readable form which provides product function or correction that is distributed outside the Contractors' standard generally announced "New Version" and "New Release" delivery methods.

"Pre-Release Change" means any enhancement, the development or testing of which is not yet completed, such that it is not yet generally released to Contractor's customers.

Additional Technical Services Terms:

Regardless of the nature of the Error Condition, Contractor may provide a resolution in the form of a Pre-Release Change, a Modification, or such other information, instructions or patches as are sufficient to eliminate or reduce the Error Condition. Ordering activity agrees to promptly notify Contractor in writing following the discovery of any Error Condition. Further, upon discovery of an Error Condition, and at the request of Contractor, the ordering activity agrees to submit a listing of output and any other information that Contractor may require in order to reproduce the Error Condition and/or the operating conditions under which the Error Condition occurred or was discovered.

Ordering activity further agree to acquire, install and/or implement as directed, certain services, hardware, software, software versions, releases, and the like, as may be deemed necessary by Contractor from time to time for proper operation of the Software. Such items may be at an additional cost for which ordering activity is solely and financially responsible. Ordering activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and to obtain support from Contractor. Contractor shall not be responsible for delays or inability to provide maintenance or support caused by events or circumstances beyond its reasonable control.

The following matters are not covered by Contractor's technical service obligations hereunder:

(a) any problem resulting from misuse, improper use, or damage of the Software, to the extent caused by the ordering activity, provided the ordering activity's actions were not directed by Contractor or set forth in the Software documentation;

(b) any problem resulting from any unauthorized modification made to the Software, but only to the exten of such modification;

(c) any problem resulting from software not licensed to ordering activity by Contractor or from failure of software not provided or recommended for use with the Software by Contractor (any such software is a "nonqualified Product");

(d) any problem resulting from the combination of the Software with any Nonqualified Product.

Contractor will not provide support services for a problem caused by a Nonqualified Product of the combination of the Software with any Nonqualified Product. If, in Contractor's opinion, performance of any technical support for Software is made more difficult or impaired because of ordering activity's use of Nonqualified Products, Contracto shall so notify ordering activity, and ordering activity will immediately remove the Nonqualified Product at its own risk and expense during Contractor's efforts to render support. Ordering activity shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

In connection with Contractor's provision of technical support for the Software, ordering activity has the responsibility to do each of the following with respect to the Software: (1) maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications, and insure that any problems reported to Contractor are not due to hardware malfunction; (2) maintain the designated computer system at the latest code revision level deemed necessary by Contractor for proper operation of the Software; (3) perform any tests or procedures recommended by Contractor for the purpose of identifying and/or resolving any technical problems submitted by ordering activity for service under the terms of this agreement; (4) maintain a procedure external to the Software for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by ordering activity; (5) at all times follow routine operational procedures as specified in the Software documentation; (6) remain solely responsible for providing dummy data in the event Contractor has on-line access to ordering activity's Software installation in order to to best safeguard ordering activity's proprietary, confidential, and classified information; (7) ensure that the computer system on which the Software is installed is also isolated from any process links, or anything that could cause harm or interference, before the ordering activity requests or receives remote support assistance from Contractor; and (8) provide all information necessary for Contractor to perform its duties hereunder in American English in a form discernible by Contractor.

4. SOFTWARE MAINTENANCE

a. Software maintenance as it is defined: (select software maintenance type) :

___**X**_____   1. Software Maintenance as a Product (SIN 132-32 or SIN 132-33)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Websense

Technical Support. Standard technical support includes online website and/or portal access, telephone support during business hours, and Software Upgrades for the Products during the Subscription Term upon payment of the Subscription Fees. Database Updates and Software Upgrades will be provided to Subscriber only if Subsciber has paid the appropriate Subscription Fees for all Seats and/or servers. Standard technical support is provided pursuant to the terms of this Agreement and the then-current technical support policies at: http://www.websense.com/content/Assets/PDF/Websense_Global_Technical_Support_Users_Guide.pdf. Websense may require Subscriber to install Software Upgrades up to and including the latest release. Enhanced support offerings and services (including installation, deployment, and consulting services) are only available for additional cost and are also subject to the terms of this Agreement.

b.   Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

NetApp:

Software maintenance services shall be made available by Contractor to the ordering activity at the prices listed in the pricelist subject to NetApp's standard commercial terms and conditions for Support Services, provided in "*NetApp Support Offering Standard Terms and Conditions – North America*" available at http://www.netapp.com/us/how-to-buy/stc.html:

Bluecoat: fees for support services are due and payable in advance.

Websense: fees for support services are due and payable in advance at the beginning of the subscription term.

5. PERIODS OF TERM LICENSES (132-32)

a.   The Contractor shall honor orders for periods for the duration of the contract period or a lessor period of time.

b.   Term licenses may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c.   Annual Funding. When annually appropriated funds are cited on an order for term licenses, the period of the term licenses shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses orders citing the new appropriation shall be required, if the term licenses is to be continued during any remainder of the contract period.

d.   Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e.   Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses is to be terminated at that time. Orders for the continuation of term licenses will be required if the term licenses is to be continued during the subsequent period.

6.	UTILIZATION LIMITATIONS - (132-32, 132-33)

a.   Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b.   When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1)   Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

(2)   Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

Exception: NetApp software provided by Contractor shall not be used on a sharing basis between multiple agencies; the software is keyed to the device upon which it operates and cannot be transferred or relocated to other equipment.

Exception: Websense: The websense products are provided for the number of Seats for use in Subscriber's own internal business operations (not for the benefit of any other person or entity) for the time period set forth herein or in the applicable order, provided Subscriber has and continues to pay the applicable fees for the products. Subscriber may relocate or transfer the Product for use on a different server within its location provided it is otherwise in compliance with the Websense commercial end user subscription agreement. "Seat" means each

computer, electronic appliance or device that is authorized to access or use the products, directly or indirectly. Subscriber may only exceed the number of ordered Seats if Subscriber increases its order and pays additional fees.

(3)   Except as is provided in paragraph 6.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the   ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

Exception: Websense: Subscriber may allow its agents and independent contractors to use the Websense products solely for the benefit of Subscriber; provided, however, Subscriber remains responsible for any breach of the Websense commercial end user subscription agreement. Any other use of the products by any person, business, corporation, government organization or any other entity is prohibited under the Websense commercial end user subscription agreement.

(4)   The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

Exception: NetApp software and documentation provided by Contractor shall only be modified or combined with other software to the extent expressly permitted in the standard commercial end user license agreement accompanying the software.

Exception: Websense: The products provided by Websense are governed exclusively by the Websense commercial end user subscription agreement accompanying the products. Ordering activity may only copy, transfer, combine, or modify the software as expressly allowed by the Websense commercial end user subscription agreement, and only to the extent ordering activity is otherwise in compliance with the Websense commercial end user subscription agreement.

(5)   "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

NetApp software provided by Contractor are governed exclusively by **NetApp**'s standard commercial End User License Agreement – attached to this agreement and accompanying the software – except that the provisions of (1) – (4) of this clause "Utilization Limitation" will apply with the exceptions that **NetApp** software and documentation may not be used on a sharing basis and may only be modified or combined with other software to the extent expressly permitted in the standard commercial end user license agreement accompanying the software.

Websense products are governed exlusively by the Websense commercial end user subscription agreement accompanying the products, and attached here for reference (Attachment I)

7.   SOFTWARE CONVERSIONS - (132-32 AND 132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system , or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to

purchase the earlier version. Conversion credits are not applicable to Vericept software as the product is based on one operating system.

Exception NetApp: Conversion credits are not applicable to **NetApp** software provided by Contractor as the software is based on one operating system.

8.	DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

PKWARE INC.

Products Overview: http://www.pkware.com/software

Enterprise Software Solutions

Software for the efficient, secure and interoperable data transfer and storage on desktops, servers and mainframes. SecureZIP seamlessly compresses and secures data with end-to-end encryption throughout the extended enterprise and delivers interoperability across all major computing platforms – mainframe, midrange, server, and desktop.

For the Server and zSeries Software described below, installation and production usage is only permitted on the Authorized Machine(s) located at the Authorized Site. "Authorized Machine" shall mean each computer (a) which is owned or operated by or on behalf of the ordering activity and operated at an Authorized Site, and (b) which is identified in the ordering activity's accepted purchase order to the extent applicable to the Software. "Authorized Site" shall mean the physical location identified in the ordering activity's accepted purchase order to the extent applicable to the software at which the ordering activity may install and use the Software on an Authorized Machine. Nothing herein seeks to negate or override the ordering activity's licensed non-production/disaster recovery usage of the Software as speicified in Section 8 above and such usage is authorized by Contractor.

The standard use license for the Software solutions specified below do not include a license to distribute self-extracting files unless otherwise agreed to in writing by Contractor and the ordering activity. As such, the ordering activity may only use the Software to create files that uncompress and/or decrypt upon being opened ("Self-Extracting Files") for internal use and ordering activity may not sell, transfer, assign, license, or otherwise distribute to any third party any Self-Extracting File created through the use of the Software where the ordering activity derives any compensation in whatever form, or any commercial gain whatsoever.

PKWARE INC. Continued

For all license purchases the ordering activity will maintain true, complete, and correct records as to the location and use of each copy of the Software in its possession or control. Upon written request from Contractor, which is limited to once in any twelve (12) month period, the ordering activity will provide Contractor with a statement of license compliance in regard to the Software on such ordering activity's letterhead.

SecureZIP for Windows Desktop

State-of-the-art data security with email integration, administrative control, and integrated PKI support.

The license for SecureZIP for Windows Desktop permits the ordering activity to install and use such Software concurrently on the number of computers set forth on the ordering activity's accepted purchase order (the "Authorized Number"). The ordering activity may use remote access technologies, such as Citrix Access Platform or Microsoft Terminal Services to access and use licensed copies of the Software provided the ordering activity purchases a license for at least the same number of licneses of the Software as the ordering activity holds seats for the remote access technologies. For example, if the ordering activity has 200 licenses for SecureZIP and 100 of those users can also access SecureZIP via Citrix, then the ordering activity is required to purchase 300 license for SecureZIP.

SecureZIP Server

(Supported Platforms: Solaris, HP-UX, IBM-AIX, Linux, Windows) Combined state-of-the-art data security, automatic FTP and SMTP email integration, support for enterprise management consoles, integrated PKI support and command line interface.

For a Software installation on HP-UX, IBM-AIX, Linux for x86, and Sun Solaris: A license is required for every CPU on the machine on which the Software is installed. Each pair of cores on a machine's processor(s) counts as one (1) CPU. Total number of CPUs equal the machine's aggregate number of cores (across all processors) divided by 2. For example, a machine with 2 quad core processors has 8 cores in aggregate; 8/2 = 4, the total number of CPUs. Additionally, in the event a machine has a virtual operating environment, a license is required for each virtual operating environment in which the Software is installed (i.e. each virtual instance).

For Windows Server versions of the Software: A license is required for each physical and each virtual operating environment in which the Software is installed (i.e. each instance).

PKZIP Server

(Supported Platforms: Solaris, HP-UX, IBM-AIX, Linux, Windows) Automatic FTP and SMTP email integration, support for enterprise management consoles, data security & command line interface.

For a Software installation on HP-UX, IBM-AIX, Linux for x86, and Sun Solaris: Alicense is required for every CPU on the machine on which the Software is installed. Each pair of cores on a machine's processor(s) counts as one (1) CPU. Total number of CPUs equal the machine's aggregate number of cores (across all processors) divided by 2. For example, a machine with 2 quad core processors has 8 cores in aggregate; 8/2 = 4, the total number of CPUs. Additionally, in the event a machine has a virtual operating environment, a license is required for each virtual operating environment in which the Software is installed (i.e. each virtual instance).

For Windows Server versions of the Software: A license is required for each physical and each virtual operating environment in which the Software is installed (i.e. each instance).

SecureZIP for zSeries

All the compression feature sets within PKZIP for zSeries as well as options for digital certificate and password-based encryption. Powered by trusted RSA BSAFE algorithms that support FIPS 197 – certified AES and 3DES for encrypting file contents and file names. Ability to read digitally signed files and passwords or certificate-encrypted files created by SecureZIP on any platform. Add-on features included secure store for private keys, certificate-based digital signatures, integration with directory servers, etc.

A Software license for SecureZIP on a zSeries machine is specific to the number of processors, serial number and MIPS capacity of such licensed machine (aska the Authorized Machine). Any change to the Authorized Machine including a transfer

of the license to a different machine is subject to the applicable fees. All MIPS ratings are determined by Cheryl Watson's CPU chart.

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PKZIP for zSeries

Designed for the OS/390 platform, providing dynamic, cross-platform compatible data compression that can compress and decompress SEQ files (flat files), PDSs, PDS/Es, VSAM data sets, and even ZIP data from or data to magnetic tape. Includes EXE/SFX support, large file support, multiple file handlers, as well as user friendly interfaces.

A Software licnse for PKZIP on a zSeries machine is specific to the number of processors, serial number and MIPS capacity of such licensed machine (aka the Authorized Machine). Any change to the Authorized Machine including a transfer of the license to a different machine is subject to the applicable fees. All MIPS ratings are determine by Cheryl Watson's CPU chart.

9.	RIGHT-TO-COPY PRICING

Not available.

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MASTER LICENSE FOR PKWARE GSA SCHEDULED PRODUCTS
(SERVER, UNIX, & MAINFRAME)

This License Agreement ("Agreement") is made by and between Licensor and Licensee, as defined below.

This Agreement consists of Part 1 – Software License and General Terms, and Part 2 – Maintenance and Support Terms. This Agreement is part of the master Schedule 70 of Licensor's GSA contract, and any applicable terms of Licensee's task order.

PART 1. SOFTWARE LICENSE AND GENERAL TERMS.

1. DEFINITIONS

"Authorized Machine" shall mean each computer (a) which is owned or operated by or on behalf of Licensee and operated at an Authorized Site, and (b) which is identified in the Order to the extent applicable to the Software.

"Authorized Site" shall mean the physical location identified in the Order to the extent applicable to the Software at which Licensee may install and use the Software on an Authorized Machine.

"Documentation" shall mean all written and electronic information generally made available by Licensor to its customers relating to the operation and functionality of the Software, including user manuals, installation guides, and any "read me" or "help" files.

"Effective Date" shall mean the date upon which this Agreement becomes effective as identified in the portion of the Order applicable to the Software.

"Licensee" shall mean the ordering activity of the U.S. federal government. "Licensor" shall mean PKWARE, INC.

"Order" means an ordering activity's valid task order accepted by Licensor. The terms of this Agreement and the Order shall govern except to the extent expressly set forth to the contrary in any subsequent written agreement structured as a contract modification and executed by both Licensor and Licensee.

"Software" shall mean the object code version of the software program(s) identified on the Order, and associated Documentation.

2. LICENSE

2.1 **License Grant.** Licensor hereby grants to Licensee a limited, perpetual (subject to Section 5), non-exclusive, enterprise-wide license to use the Software, subject to the terms and conditions of this Agreement and those terms of the Order.

2.2 **Restrictions on Use.** Licensee shall use the Software for government purposes only. Licensee shall not: (i) use the Software in any manner as part of the operation of a service bureau or data center outsourcer; or (ii) allow access to the Software by any third party, except for consultants provided that such access is for internal business use of the Licensee and the consultant is made aware that it is also subject to section 6 of this Agreement. Licensee shall not, directly or indirectly, use all or any part of the Software to create products competitive with those of Licensor.

The license granted in section 2.1 above shall extend solely to the installation and use of the Software on the Authorized Machine(s) at the Authorized Site(s).

For a Software installation on HP-UX, IBM-AIX, Linux for x86, and Sun Solaris: A license is required for every CPU on the machine on which the Software is installed. Each pair of cores on a machine's processor(s) counts as one (1) CPU. For purposes of this Agreement, Licensee's total number of CPUs equal the machine's aggregate number of cores (across all processors) divided by 2. For example, a machine with 2 quad core processors has 8 cores in aggregate; 8/2 = 4, the total number of CPUs. Additionally, in the event a machine has a virtual operating environment, a license is required for each virtual operating environment in which the Software is installed (i.e. each virtual instance).

For Windows Server versions of the Software: A license is required for each physical and each virtual operating environment in which the Software is installed (i.e. each instance).

2.3 **Restrictions on Copying/Modification.** Licensee may not (1) reverse-engineer, decompile, or otherwise translate the Software, (2) create derivative works based upon the Software, in whole or in part, or (3) except as expressly permitted by the terms of this Agreement, copy or distribute all or any part of the Software.

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2.4   **Permitted Copying.** Licensee, solely to safeguard the Software should the authorized production version be damaged or destroyed, may make copies of the Software for archival or backup purposes. Licensee, solely to facilitate the uninterrupted use of the Software hereunder, may make a single copy of the installation media for Software for archival or backup purposes, provided that such copy, if contained on physical media, shall include, on the physical media, Licensor's copyright and other proprietary notices as contained on the Software as provided to Licensee.

2.5   **Restrictions on Distribution of Self-Extracting Files.** Licensee may use the Software to create Self-Extracting Files for Licensee's internal use. Licensee may not sell, transfer, assign, license, or otherwise distribute to any third party any Self-Extracting File created through use of the Software where Licensee derives any compensation, in whatever form, or any commercial gain whatsoever.

2.6   **Acknowledgment and Reservation of Rights.** Licensee acknowledges and agrees that Licensor owns all intellectual property and other proprietary rights in and to the Software and that all rights not expressly granted herein are reserved to Licensor.

2.7   **Compliance.** Upon written request by Licensor, Licensee shall submit to Licensor a statement of compliance confirming Licensee's compliance with its obligations under this Agreement.

2.8   **Certification of Use.** Licensee shall maintain true, complete, and correct copies of books and records reflecting the location and use of each copy of the Software in Licensee's possession or control. On at least thirty (30) days prior written notice to Licensee, but no more frequently than once in any twelve (12) month period, for any reason, Licensee shall provide Licensor with written certification that Licensee's use of the Software remains in compliance with this Agreement.

3.   FEES

3.1   Licensee shall pay license (and, to the extent applicable, maintenance) fees to Licensor in the amount and according to the terms set forth in the Order.

3.2   All license and maintenance fees due and payable under Licensor's invoice for an Order are subject to the U.S. Government's Prompt Payment Act.

3.3   Payment of any fees hereunder shall be made in a form acceptable to Licensor in U.S. dollars. All costs of payment (such as wire transfer fees) shall be the obligation of Licensee.

3.4   [Section Deleted]

3.5   Should Licensee desire to move the Software from an Authorized Machine to another machine with a greater capacity (a "Machine Upgrade"), Licensor reserves the right to increase the license and/or maintenance fees associated with the Authorized Machine. Upon the payment of such additional license and/or maintenance fees, the substitute machine shall be deemed an Authorized Machine for purposes of this Agreement.

3.6   Upon payment in full of all license fees for the Software, Licensor shall issue keys allowing Licensee to execute the Software on the Authorized Machine(s). If Licensee chooses to receive maintenance and support for the Software and pays the required maintenance fee, during the Maintenance Term, Licensor shall issue key(s) to Licensee upon request for supported versions of the Software allowing Licensee to execute the Software on a substitute machine(s) of an equal or lesser average capacity in lieu of the Authorized Machine(s) and/or Authorized Site.

4.   TERM AND TERMINATION

4.1   **Term.** The term of this Agreement shall commence as of the Effective Date and continue in perpetuity unless otherwise provided in the Order or until terminated earlier as provided hereunder. If an Order provides for a particular term, the Agreement shall automatically renew after the end of the term provided in the Order for successive one (1) year renewal terms, provided that, prior to the commencement of a renewal term, Licensee pays Licensor such fees as Licensor and Licensee may agree. If the parties cannot reach agreement on such fees, the term shall not renew.

4.2   **Termination by Licensee.** Licensee may terminate this Agreement at any time, with or without cause, upon written notice to Licensor provided Licensee is in compliance with all of its obligations hereunder. Except as expressly provided herein, Licensee shall not be entitled to any refund of any fees paid hereunder upon termination of this Agreement.

4.3   **Termination by Licensor.** Licensor may terminate this Agreement upon written notice of termination for breach to Licensee if Licensee materially breaches any term of this Agreement and fails to cure such material breach to Licensor's reasonable satisfaction within thirty (30) days of receipt of notice of intent to terminate for breach from Licensor. Notwithstanding the generality of the foregoing, if, in Licensor's reasonable judgment, Licensee's breach materially infringes or impairs Licensor's intellectual property or other proprietary rights in the Software, Licensor may terminate this Agreement immediately.

4.4   **Actions on Termination.** Upon termination or cancellation of this Agreement for any material breach, the license granted hereunder shall terminate, Licensee shall immediately discontinue any and all use of the Software, Licensee shall immediately destroy the Software, and any and all physical or electronic copies thereof, and Licensee shall deliver to Licensor, within twenty (20) days of such termination, expiration, or cancellation, written certification, executed by an officer of Licensee, that Licensee has complied with this section. Except as expressly set forth in section 5, under no circumstances shall Licensee be entitled to any refund or return of fees or charges upon termination, expiration, or cancellation of this Agreement for any reason. All provisions of this Agreement which by their nature are intended to survive the expiration or termination of this Agreement shall survive and remain in full force and effect, including but not limited to the restrictions and obligations set forth in sections 2.2, 2.3, 2.8, 3, 4.4, 5.3, 5.5, 6 and 7 of Part 1 of this Agreement.

5.   LIMITED WARRANTY, DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

5.1   **Warranty.** Licensor warrants, for a period of ninety (90) days following Licensee's receipt of the Software that the Software will operate substantially in conformance with Licensor's current published documentation and specifications for such Software ("Warranty Period"). If at any time during the Warranty Period, Licensor or Licensee discovers a defect, or error in the Software or a failure to conform to the provisions of the foregoing warranty, Licensor will correct such defect, error or non-conformity by, among other things, supplying the ordering activity with such corrective codes and making such addition, modification, replacement or adjustment as may be necessary to keep the Software operating in conformity with the warranties herein. In the event that Licensor is unable to correct such defect, error or non-conformity, Licensor shall refund to the ordering activity all the fees paid by Licensee for the Software and the associated maintenance and support and the license for such installation of the Software would terminate.

5.2   **Maintenance and Support Limited Warranty.** Licensor warrants that the maintenance and support services provided hereunder shall be performed in a professional and workmanlike manner in accordance with the generally accepted industry standards.

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5.6 **Indemnification.** Licensor does hereby indemnify and shall hold Licensee harmless against all suits, damages and expenses (including reasonable attorneys' fees) arising from a claim made by a third party that any Software licensed hereunder infringes or violates such third party's intellectual property rights, including trade secrets, proprietary information, trademark, copyright, or patent rights. Licensee shall notify Licensor immediately of any such claim and the parties shall provide reasonable assistance to one another to help each other defend against such claim. This indemnification does not cover third party claims to the extent such claims are based on (i) modifications to the Software not authorized by Licensor; (ii) combination or use of the Software with any third party product as not expressly contemplated by the applicable documentation; or (iii) Licensee or its agents continued use of the Software subsequent to Licensor's notice to Licensee that such use may be or is in violation of third party's rights.

If a third party claim causes Licensee's quiet enjoyment and use of any Software licensed hereunder to be seriously endangered or disrupted, Licensor shall, at its option, (1) replace the Software, without additional charge, by a compatible, functionally equivalent and non-infringing product; (2) modify the Software to avoid the infringement but without adversely impairing the functionality or performance of the Software; (3) obtain a license for Licensee to continue use of the Software and pay for any additional fee required for such license; or (4) if none of the foregoing alternatives are commercially practical, Licensor shall reimburse Licensee the Software license fee paid to Licensor.

6. CONFIDENTIALITY

6.1 **Proprietary Information.** The Software and related documentation is confidential and trade secret information (the "Proprietary Information") that is proprietary to and solely owned by Licensor, together with all related copyrights and trademarks. Licensee agrees to maintain the Proprietary Information in strictest confidence for the benefit of Licensor. Licensee shall not make available or allow to be made available the Proprietary Information to any third party nor shall the Licensee use such Proprietary Information except as authorized by this Agreement.

7. MISCELLANEOUS PROVISIONS

7.1 **Severability.** The provisions of this Agreement and the attached schedules are severable. If any provision of this Agreement or any schedule attached hereto is held to be invalid, illegal, or unenforceable, such provision is to that extent deemed omitted and not part of this Agreement. The validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby and shall be valid and enforceable to the maximum extent permitted by law.

7.2 **Assignment.** In the event Licensee desires to assign, sublicense, subcontract, or otherwise transfer this Agreement, the license granted hereunder, or any of its other rights or obligations under this Agreement or delegate any of its duties under this Agreement it will notify Licensor in writing seeking Licensor's consent, which consent shall not be unreasonably withheld.

7.3 **Governing Law and Forum Choice.** This Agreement shall be construed as having been made in, and shall be governed in accordance with, the laws of the United States.

7.4 **Export Restrictions.** Licensee agrees to comply with all applicable export laws and regulations.

7.5 **US Government Restricted Rights.** The Software is provided with RESTRICTED AND LIMITED RIGHTS. In the event the Software is purchased via GSA, its use, duplication, or disclosure is subject to restrictions as set forth in Contract No. GS-35F-0618R, FAR 52.227-14, Alternate III; and FAR 52.227-19 unless Licensee is a defense entity (e.g. DOD) wherein the applicable DFAR provisions may replace the aforementioned FAR provisions.

7.6 **Entire Agreement.** This Agreement, inclusive of the applicable Order(s) and Schedule 70 of which this Agreement is a component, constitutes the exclusive and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof between Licensor and Licensee.

7.7 **Modification and Waiver.** No modification of this Agreement or any Schedule or Addendum and no waiver of any breach of this Agreement shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement and no course of dealing between the parties shall be construed as a waiver of any subsequent breach of this Agreement. The failure of either party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.

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7.8 **Force Majeure.** Neither party shall be responsible for failure to fulfill any obligations due to causes beyond its control including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any applicable law, regulation, or order (whether valid or invalid) of any governmental body, except that such causes shall not extend the due date for, or excuse the timely payment of, any amounts payable by a party hereunder.

7.9 **Notice.** Any notice, request, instruction or other document or communications to be given hereunder by either party to the other shall be in writing, and delivered via email, personally, overnight courier, express mail, or certified mail – return receipt requested, postage prepaid (such notice to be effective on the date receipt is signed by the receiving party). Any such notice to Licensor shall be sent to its address as follows:

> PKWARE, INC.
> 648 N. Plankinton Ave.
> Suite 220
> Milwaukee, WI 53203
> legal@pkware.com

or to such other address as Licensor shall designate by notice in writing to Licensee. Any such notice to Licensee shall be sent to its address as set forth in the Order, or to such other address as Licensee shall designate by notice in writing to Licensor.

7.10 **Arbitration.** [Section Deleted.]

PART 2. MAINTENANCE AND SUPPORT.

Maintenance and Support will be available to Licensee if Licensee is current on all maintenance payments with Licensor and Licensee is running a currently supported version(s) of the Software. Licensor reserves the right to increase the annual maintenance fee applicable to the Software by an amount not to exceed five percent (5%) per year.

8. DEFINITIONS. For purposes of this Part 2:

"Business Hours" shall mean the hours from 8:00 a.m. through 6:00 p.m. based upon the Licensee's Local Time Zone, Monday through Friday, except for Licensor's holidays, a listing of which is available from Licensor upon request.

"Error Condition" shall mean any demonstrable, reproducible defect, program error, or other non-conformance of the Software with its Documentation caused solely by errors or defects in the code of the Software.

"Licensee's Local Time Zone" shall mean either the United States Central Time Zone or the Central European Time Zone, whichever is closest in proximity to the Licensee.

"Maintenance Term" shall mean, initially, the Maintenance Term identified in the Order. Upon expiration of the initial Maintenance Term, the Maintenance Term shall automatically renew for additional one (1) year periods unless terminated earlier by either party, at its option, by written notice at least sixty (60) days prior to the end of the then-current Maintenance Term. The Maintenance Term shall immediately terminate upon the termination, expiration, or cancellation of this Agreement for any reason.

"New Version" shall mean a complete replacement of the executable code of the Software in machine-readable form, to provide significant new features or functions. A New Version may incorporate one or more enhancements. A New Version involves only such enhancements that change the version number immediately to the left of the decimal point. Changes to the version number are made solely at the discretion of the Licensor.

"New Release" shall mean a partial or complete replacement of the executable code of the Software in machine-readable form, which may provide new features or functions. A New Release may incorporate some or no enhancements. A New Release involves only such alterations that change the release number to the immediate right of the decimal point. Changes to the release number are made solely at the discretion of the Licensor.

"Modification" shall mean a partial or complete replacement of the executable code of the Software in machine-readable form which provides product function or correction that is delivered outside the standard announced "New Version" and "New Release" delivery methods.

"Pre-Release Change" shall mean any enhancement, the development or testing of which is not yet completed, such that it is not yet generally released to Licensor's customers.

"Nonqualified Product" shall mean any product not listed as compatible with Software in Licensor's promotional materials.

9.   MAINTENANCE TERM

9.1   Licensor agrees to provide maintenance and support for the Software pursuant to the terms of this Part 2 during the Maintenance Term, provided the maintenance fee is fully paid and current and Licensee is also in full compliance and current with all of its other obligations under this Agreement.

10.   SUPPORT.

10.1   **Non Error Condition Support.** During the Maintenance Term, Licensor shall provide support for non-Error Condition-related questions regarding the Software by e-mail, telephone, telefax or online consultation during Business Hours.

10.2   **Error Condition Support.** During the Maintenance Term, Licensor shall provide support for reporting and resolving Error Conditions through the standard support line during Business Hours.

10.3   Regardless of the nature of the Error Condition, Licensor may provide a resolution in the form of a Pre-Release Change, a Modification, or such other information, instructions or patches as are sufficient to eliminate or reduce the Error Condition.

10.4   Licensee agrees to promptly notify Licensor in writing following the discovery of any Error Condition. Further, upon discovery of an Error Condition, and at the request of Licensor, Licensee agrees to submit a listing of output and any other information that Licensor may require in order to reproduce the Error Condition and/or the operating conditions under which the Error Condition occurred or was discovered.

10.5   Licensee agrees to acquire, install and/or implement as directed, certain services, hardware, software, software versions, releases, and the like, as may be deemed necessary by Licensor from time to time for proper operation of the Software. Such items may be at an additional cost for which Licensee is financially responsible.

10.6   Licensee is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and to obtain support from Licensor. Licensor shall not be responsible for delays or inability to provide maintenance or support caused by events or circumstances beyond its reasonable control.

10.7   **Exceptions.** The following matters are not covered by Licensor's maintenance and support obligations hereunder:

    (a)   problems resulting from misuse, improper use, or damage of the Software, to the extent caused by Licensee, provided that Licensee's actions were not directed by Licensor or set forth in the Documentation;

    (b)   problems resulting from any unauthorized modification made to the Software, but only to the extent of such modification;

    (c)   problems resulting from any Nonqualified Product or from failure of equipment.

If Licensor provides support services for a problem caused by a Nonqualified Product, or from failure of equipment, Licensor will charge on a time and materials basis for such extra service at its then current rates for customer support services. If, in Licensor's opinion, performance of any support hereunder is made more difficult or impaired because of Nonqualified Products, Licensor shall so notify Licensee, and Licensee will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render support hereunder. Licensee shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

10.8   **Licensee's Responsibilities.** In connection with Licensor's provision of support hereunder, Licensee acknowledges that Licensee has the responsibility to do each of the following with respect to the Software: (1) maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications; (2) maintain the designated computer system at a supported revision level prescribed by the Documentation for proper operation of the Software; (3) perform any tests or procedures recommended by Licensor for the purpose of identifying and/or resolving any problems submitted by Licensee for servicing under the terms of this Agreement; (4) maintain a procedure external to the Software for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by Licensee; (5) at all times follow routine operator procedures as specified in the Documentation; and (6) provide all information in American English in a form discernible by Licensor.

11.   MAINTENANCE

11.1   **Data Format/Content Changes.** If the format and/or content of raw data which is processed by the Software changes as a result of vendor changes in the operating system and sub-systems which create the data, Licensor agrees to provide for the continued compatibility of the Software.

11.2 **Modifications and New Releases.** Provided Licensee is current on all of its obligations pursuant to the Agreement and any Schedules attached thereto, during the Maintenance Term, Licensor shall provide to Licensee at no additional charge all Modifications and New Releases to the Software, the schedule, nature, and scope of which shall be in the Licensor's sole discretion.

11.3 **New Versions.** Licensee may choose to license New Versions of the Software at the time of their availability under the terms and conditions of the Agreement and its attached Schedules, subject to the applicable pricing for such New Versions as set forth by Licensor in an appropriate supplement or Order executed by the parties. Licensee is under no obligation to license any such New Versions.

12. REINSTATEMENT

12.1 In the event Licensee discontinues Software maintenance and support via either termination or expiration of the contracted maintenance term, and subsequently opts to resume Software maintenance and support then the ordering activity shall pay to Licensor the applicable maintenance fee for the lapsed maintenance period.

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MASTER LICENSE AGREEMENT FOR PKWARE GSA SCHEDULED PRODUCTS
(Windows Desktop)

This License Agreement ("Agreement") is made by and between Licensor and Licensee, as defined below.

This Agreement consists of Part 1 – Software License and General Terms, and Part 2 – Maintenance and Support Terms. This Agreement is part of the master Schedule 70 of Licensor's GSA contract, and any applicable terms of Licensee's task order.

PART 1 - SOFTWARE LICENSE AND GENERAL TERMS

1. DEFINITIONS

"Authorized Number" means the number of computers, as set forth on the Order, on which Licensee may install a copy of the Software concurrently. Notwithstanding anything to the contrary herein, for the product known as *SecureZIP Mail Gateway ("SMG")* the Authorized Number means the number of desktops that can utilize SMG functionality.

"Documentation" means all written and electronic information generally made available by Licensor to its customers relating to the operation and functionality of the Software, including user manuals, installation guides, and any "read me" or "help" files.

"Effective Date" means the date upon which this Agreement becomes effective as identified in the portion of the Order applicable to the Software.

"Licensee" means the ordering activity of the U.S. government .

"Licensor" means PKWARE, INC.

"Order" means an ordering activity's valid task order accepted by Licensor. The terms of this Agreement and the Order shall govern except to the extent expressly set forth to the contrary in any subsequent written agreement structured as a contract modification and executed by both Licensor and Licensee.

"Self-Extracting File(s)" means an executable file created using the Software which includes object code to uncompress and/or decrypt upon being opened. A Self Extracting File may include ".exe" as the extension to its file name.
"Software" means the object code version of the software program(s) identified on the Order, and associated Documentation.

2. LICENSE

2.1   License Grant. In consideration of the applicable license fee, Licensor grants to Licensee a perpetual, non-transferable (except as permitted herein), non-exclusive, license to install and use the Software specified in the applicable Order for governmental purposes only. This license extends solely to Licensee's installation and use of the Software on the Authorized Number of computers owned by or operated on behalf of Licensee. Licensee is solely responsible for the installation and configuration of the Software. Licensee may utilize remote access technologies (e.g. Citrix® Access Platform or Microsoft® Terminal Services) to access and use its licensed installations of the Software provided Licensee also purchases, at minimum, the same Authorized Number of licenses of the Software as Licensee owns seats for the remote access technologies. In the event Licensee installs the Software in a virtual operating environment, Licensee is required to purchase a Software license for each guest operating system which runs within a host based virtual machine environment or a hypervisor. In the event Licensee makes the Software available for use through application virtualization, Licensee is required to purchase a Software license for each user who can access the Software via such virtualization.
2.2   Non-production Usage. Licensee is permitted, at no additional cost, to make a reasonable number of copies of the Software only for non-production archival or cold-backup purposes. Such copies may be only be installed to minimize interruption and/or replace the production installation of the Software in the event such installation is damaged or destroyed due to disaster. Licensee will ensure that each copy, if contained on physical media, includes Licensor's copyright and other proprietary notices as they appear on the Software provided by Licensor. Licensee will pay all applicable license and maintenance fees to Licensor if it installs, as a course of its business, any non-production, disaster-recovery (aka "hot back-up" or "failover") and/or test/development copies of the Software.

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Software or any copy or modification thereof, in whole or in part, to any person except as provided herein. Notwithstanding the foregoing, Licensee's consultant(s) may use the Software pursuant to this Agreement, provided that such use is solely for Licensee's internal business purposes.

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2.5   Acknowledgment and Reservation of Rights. Licensee acknowledges and agrees that Licensor and its licensors own all intellectual property and other proprietary rights in and to the Software and that all rights not expressly granted herein are reserved to Licensor.

2.6   Compliance. Upon written request by Licensor, Licensee shall submit to Licensor a statement of compliance confirming Licensee's compliance with its obligations under this Agreement.

2.7   Certification of Use. Licensee shall maintain true, complete, and correct copies of books and records reflecting the location and use of each copy of the Software in Licensee's possession or control. On at least thirty (30) days prior written notice to Licensee, but no more frequently than once in any twelve (12) month period, for any reason, Licensee shall provide Licensor with written certification that Licensee's use of the Software remains in compliance with this Agreement.

3.   FEES

3.1   Licensee shall pay license (and, to the extent applicable, maintenance) fees to Licensor in the amount and according to the terms set forth in the Order.

3.2   All license and maintenance fees due and payable under Licensor's invoice for an Order are subject to the U.S. Government's Prompt Payment Act.

3.3   Payment of any fees hereunder shall be made in a form acceptable to Licensor in U.S. dollars. All costs of payment (such as wire transfer fees) shall be the obligation of Licensee.

3.4   [Section Deleted]

4.   TERM AND TERMINATION

4.1   Term. The term of this Agreement shall commence as of the Effective Date and continue in perpetuity unless otherwise provided in the Order or until terminated earlier as provided hereunder. If an Order provides for a particular term, the Agreement shall automatically renew after the end of the term provided in the Order for successive one (1) year renewal terms, provided that, prior to the commencement of a renewal term, Licensee pays Licensor such fees as Licensor and Licensee may agree. If the parties cannot reach agreement on such fees, the term shall not renew.

4.2   Termination by Licensee. Licensee may terminate this Agreement at any time, with or without cause, upon written notice to Licensor, provided Licensee is in compliance with all of its obligations hereunder. Except as expressly provided herein, Licensee shall not be entitled to any refund of any fees paid hereunder upon termination of this Agreement.

4.3   Termination by Licensor. Licensor may terminate this Agreement upon written notice of termination for breach to Licensee if Licensee materially breaches any term of this Agreement and fails to cure such material breach to Licensor's reasonable satisfaction within thirty (30) days of receipt of notice of intent to terminate for breach from Licensor. Notwithstanding the generality of the foregoing, if, in Licensor's reasonable judgment, Licensee's breach materially infringes or impairs Licensor's intellectual property or other proprietary rights in the Software, Licensor may terminate this Agreement immediately.

4.4   Actions on Termination. Upon termination or cancellation of this Agreement for any material breach, the license granted hereunder shall terminate, Licensee shall immediately discontinue any and all use of the Software, Licensee shall immediately destroy the Software, and any and all physical or electronic copies thereof, and Licensee shall deliver to Licensor, within twenty (20) days of such termination, expiration, or cancellation, written certification, executed by an officer of Licensee, that Licensee has complied with this section. Except as expressly set forth in section 5, under no circumstances shall Licensee be entitled to any refund or return of fees or charges upon termination, expiration, or cancellation of this Agreement for any reason. All provisions of this Agreement which by their nature are intended to survive the expiration or termination of this Agreement shall survive and remain in full force and effect, including but not limited to the restrictions and obligations set forth in sections 2.3, 2.5, 2.7, 3, 4.4, 5.3, 5.5, 6 and 7 of Part 1 of this Agreement.

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5. LIMITED WARRANTY, DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

5.1 Warranty.

Licensor warrants, for a period of ninety (90) days following Licensee's receipt of the Software that the Software will operate substantially in conformance with Licensor's current published documentation and specifications for such Software ("Warranty Period"). If at any time during the Warranty Period, Licensor or Licensee discovers a defect, or error in the Software or a failure to conform to the provisions of the foregoing warranty, Licensor will correct such defect, error or non-conformity by, among other things, supplying the ordering activity with such corrective codes and making such addition, modification, replacement or adjustment as may be necessary to keep the Software operating in conformity with the warranties herein. In the event that Licensor is unable to correct such defect, error or non-conformity, Licensor shall refund to the ordering activity all the fees paid by Licensee for the Software and the associated maintenance and support and the license for such installation of the Software would terminate.

5.2 Maintenance and Support Limited Warranty. Licensor warrants that the maintenance and support services provided hereunder shall be performed in a professional and workmanlike manner in accordance with the generally accepted industry standards.

5.3 DISCLAIMER OF WARRANTIES. LICENSEE IS SOLELY RESPONSIBLE FOR INSTALLATION AND CONFIGURATION OF THE SOFTWARE. THE WARRANTIES SET FORTH ABOVE ARE LICENSOR'S EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES OR REPRESENTATIONS ARE PROVIDED WITH RESPECT TO THE SOFTWARE, THE MAINTENANCE AND SUPPORT, OR OTHERWISE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL BE FREE FROM PROGRAM ERRORS.

5.4 Legal Rights. The foregoing limited warranties give Licensee specific legal rights and Licensee may have other rights which vary from state to state and jurisdiction to jurisdiction. Some states and jurisdictions may not allow limits on how long an implied warranty lasts. In those cases, the above limits may not apply to Licensee.

5.5 LIMITATION OF LIABILITY. LICENSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, OR FOR ANY ECONOMIC OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR SAVINGS), EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW EXCLUSION OR LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO LICENSEE.

Licensor will not be liable for (1) loss of, or damage to, the records or data of Licensee or any other party, or (2) any damages claimed by Licensee based on any third party claim.

UNDER NO CIRCUMSTANCES SHALL LICENSOR'S TOTAL LIABILITY TO LICENSEE OR ANY OTHER PARTY WITH RESPECT TO THE SOFTWARE OR OTHERWISE RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF FOR DIRECT DAMAGES EXCEED THE GREATER OF U.S. $100,000 OR THE TOTAL FEES PAID BY LICENSEE UNDER THE AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING ANY CLAIM.

The limitations, exclusions and disclaimers set forth in this Section 5 shall apply to the maximum extent permitted by applicable law, even if any remedy fails of its essential purpose. Except to the degree such service is covered by maintenance, no obligation or liability shall arise from Licensor's rendering of technical or other advice or service in connection with this Agreement, including, without limitation, advice or service related to the installation or configuration of the Software.

5.6 Indemnification. Licensor does hereby indemnify and shall hold Licensee harmless against all suits, damages and expenses (including reasonable attorneys' fees) arising from a claim made by a third party that any Software licensed hereunder infringes or violates such third party's intellectual property rights, including trade secrets, proprietary information, trademark, copyright, or patent rights. Licensee shall notify Licensor immediately of any such claim and the parties shall provide reasonable assistance to one another to help each other defend against such claim. This indemnification does not cover third party claims to the extent such claims are based on (i) modifications to the Software not authorized by Licensor; (ii) combination or use of the Software with any third party product as not expressly contemplated by the applicable documentation; or (iii) Licensee or its agents continued use of the Software subsequent to Licensor's notice to Licensee that such use may be or is in violation of third party's rights.

If a third party claim causes Licensee's quiet enjoyment and use of any Software licensed hereunder to be seriously endangered or disrupted, Licensor shall, at its option, (1) replace the Software, without additional charge, by a compatible, functionally equivalent and non-infringing product; (2) modify the Software to avoid the infringement but without adversely impairing the functionality or performance of the Software; (3) obtain a license for Licensee to continue use of the Software and pay for any additional fee required

for such license; or (4) if none of the foregoing alternatives are commercially practical, Licensor shall reimburse Licensee the Software license fee paid to Licensor.

6. CONFIDENTIALITY

6.1 Proprietary Information. The Software and related documentation is confidential and trade secret information (the "Proprietary Information") that is proprietary to and solely owned by Licensor, together with all related copyrights and trademarks. Licensee agrees to maintain the Proprietary Information in strictest confidence for the benefit of Licensor. Licensee shall not make available or allow to be made available the Proprietary Information to any third party nor shall the Licensee use such Proprietary Information except as authorized by this Agreement.

7. MISCELLANEOUS PROVISIONS

7.1 Severability. The provisions of this Agreement and the attached schedules are severable. If any provision of this Agreement or any schedule attached hereto is held to be invalid, illegal, or unenforceable, such provision is to that extent deemed omitted and not part of this Agreement. The validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby and shall be valid and enforceable to the maximum extent permitted by law.

7.2 Assignment. In the event Licensee desires to assign, sublicense, subcontract, or otherwise transfer this Agreement, the license granted hereunder, or any of its other rights or obligations under this Agreement or delegate any of its duties under this Agreement it will notify Licensor in writing seeking Licensor's consent, which consent shall not be unreasonably withheld.

7.3 Governing Law and Forum Choice. This Agreement shall be construed as having been made in, and shall be governed in accordance with, the laws of the United States.

7.4 Export Restrictions. Licensee agrees to comply with all applicable export laws and regulations.

7.5 US Government Restricted Rights. The Software is provided with RESTRICTED AND LIMITED RIGHTS. In the event the Software is purchased via GSA, its use, duplication, or disclosure is subject to restrictions as set forth in Contract No. GS-35F-0618R, FAR 52.227-14, Alternate III; and FAR 52.227-19 unless Licensee is a defense entity (e.g. DOD) wherein the applicable DFAR provisions may replace the aforementioned FAR provisions.

7.6 Entire Agreement. This Agreement, inclusive of the applicable Order(s) and Schedule 70 if which this Agreement is a component, constitutes the exclusive and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof between Licensor and Licensee.

7.7 Modification and Waiver. No modification of this Agreement or any Schedule or Addendum and no waiver of any breach of this Agreement shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement and no course of dealing between the parties shall be construed as a waiver of any subsequent breach of this Agreement. The failure of either party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.

7.8 Force Majeure. Neither party shall be responsible for failure to fulfill any obligations due to causes beyond its control including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any applicable law, regulation, or order (whether valid or invalid) of any governmental body, except that such causes shall not extend the due date for, or excuse the timely payment of, any amounts payable by a party hereunder.

7.9 Notice. Any notice, request, instruction or other document or communications to be given hereunder by either party to the other shall be in writing, and delivered via email, personally, overnight courier, express mail, or certified mail – return receipt requested, postage prepaid (such notice to be effective on the date receipt is signed by the receiving party). Any such notice to Licensor shall be sent to its address as follows:

PKWARE, INC., 648 N. Plankinton Ave., Suite 220, Milwaukee, WI 53203   legal@pkware.com
or to such other address as Licensor shall designate by notice in writing to Licensee.

Any such notice to Licensee shall be sent to its address as set forth in the Order, or to such other address as Licensee shall designate by notice in writing to Licensor.

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7.10 Arbitration. [Section Deleted]

PART 2 - MAINTENANCE AND SUPPORT

Maintenance and Support will be available to Licensee if Licensee is current on all maintenance payments with Licensor and Licensee is running a currently supported version(s) of the Software. Licensor reserves the right to increase the annual maintenance fee applicable to the Software by an amount not to exceed five percent (5%) per year.

8. DEFINITIONS. For purposes of this Part 2:

"Business Hours" means the hours from 8:00 a.m. through 6:00 p.m., Monday through Friday (excluding Licensor's holidays) in either the United States Central Time Zone or the Central European Time Zone, whichever is closest in proximity to the Licensee.

"Error Condition" means any demonstrable, reproducible defect, program error, or other non-conformance of the Software with its Documentation caused solely by errors or defects in the code of the Software.

"Maintenance Term" means, initially, the Maintenance Term identified in the Order. Upon expiration of the initial Maintenance Term, the Maintenance Term shall automatically renew for additional one (1) year periods unless terminated earlier by either party, at its option, by written notice at least sixty (60) days prior to the end of the then-current Maintenance Term. The Maintenance Term shall immediately terminate upon the termination, expiration, or cancellation of this Agreement for any reason.

"New Version" means a complete replacement of the executable code of the Software in machine-readable form, to provide significant new features or functions. A New Version may incorporate one or more enhancements. A New Version involves only such enhancements that change the version number immediately to the left of the decimal point. Changes to the version number are made solely at the discretion of the Licensor.

"New Release" means a partial or complete replacement of the executable code of the Software in machine-readable form, which may provide new features or functions. A New Release may incorporate some or no enhancements. A New Release involves only such alterations that change the release number to the immediate right of the decimal point. Changes to the release number are made solely at the discretion of the Licensor.

"Modification" means a partial or complete replacement of the executable code of the Software in machine-readable form which provides product function or correction that is delivered outside the standard announced "New Version" and "New Release" delivery methods.

"Pre-Release Change" means any enhancement, the development or testing of which is not yet completed, such that it is not yet generally released to Licensor's customers.

"Nonqualified Product" means any product not listed as compatible with Software in Licensor's promotional materials.

9. MAINTENANCE TERM

9.1 Licensor agrees to provide maintenance and support for the Latest Versions of the Software pursuant to the terms of this Part 2 during the Maintenance Term, provided the maintenance fee is fully paid and current and Licensee is also in full compliance and current with all of its other obligations under this Agreement. "Latest Versions" means versions of Software used for the fulfillment of new license orders and/or the versions for which Licensor continues to provide technical support. Latest Versions are specified in the Support section of Licensor's web site.

10. SUPPORT

10.1 Non Error Condition Support. During the Maintenance Term, Licensor shall provide support for non-Error Condition-related questions regarding the Software by e-mail, telephone, telefax or online consultation during Business Hours.

10.2 Error Condition Support. During the Maintenance Term, Licensor shall provide support for reporting and resolving Error Conditions through the standard support line during Business Hours.

10.3 Regardless of the nature of the Error Condition, Licensor may provide a resolution in the form of a Pre-Release Change, a Modification, or such other information, instructions or patches as are sufficient to eliminate or reduce the Error Condition.

10.4 Licensee agrees to promptly notify Licensor in writing following the discovery of any Error Condition. Further, upon discovery of an Error Condition, and at the request of Licensor, Licensee agrees to submit a listing of output and any other information that Licensor may require in order to reproduce the Error Condition and/or the operating conditions under which the Error Condition occurred or was discovered.

10.5 Licensee agrees to acquire, install and/or implement as directed, certain services, hardware, software, software versions, releases, and the like, as may be deemed necessary by Licensor from time to time for proper operation of the Software. Such items may be at an additional cost for which Licensee is financially responsible.

10.6 Licensee is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and to obtain support from Licensor. Licensor shall not be responsible for delays or inability to provide maintenance or support caused by events or circumstances beyond its reasonable control.

10.7 Exceptions. The following matters are not covered by Licensor's maintenance and support obligations hereunder: (a) problems resulting from misuse, improper use, or damage of the Software, to the extent caused by Licensee, provided that Licensee's actions were not directed by Licensor or set forth in the Documentation; (b) problems resulting from any unauthorized modification made to the Software, but only to the extent of such modification; and (c) problems resulting from any Nonqualified Product or from failure of equipment.

If Licensor provides support services for a problem caused by a Nonqualified Product, or from failure of equipment, Licensor will charge on a time and materials basis for such extra service at its then current rates for customer support services. If, in Licensor's opinion, performance of any support hereunder is made more difficult or impaired because of Nonqualified Products, Licensor shall so notify Licensee, and Licensee will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render support hereunder. Licensee shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

10.8 Licensee's Responsibilities. In connection with Licensor's provision of support hereunder, Licensee acknowledges that Licensee has the responsibility to do each of the following with respect to the Software: (a) maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications; (b) maintain the designated computer system at a supported revision level prescribed by the Documentation for proper operation of the Software; (c) perform any tests or procedures recommended by Licensor for the purpose of identifying and/or resolving any problems submitted by Licensee for servicing under the terms of this Agreement; (d) maintain a procedure external to the Software for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by Licensee; (e) at all times follow routine operator procedures as specified in the Documentation; and (f) provide all information in American English in a form discernible by Licensor.

11. MAINTENANCE

11.1 Data Format/Content Changes. If the format and/or content of raw data which is processed by the Software changes as a result of vendor changes in the operating system and sub-systems which create the data, Licensor agrees to provide for the continued compatibility of the Software. Licensor will make necessary corrections to the Latest Version(s), at Licensor's sole option. Licensor has no obligation to modify prior versions of the Software (i.e. non-Latest Versions) to run with the latest versions of operating systems, software, or hardware.

11.2 Modifications and New Releases. Provided Licensee is current on all of its obligations pursuant to the Agreement and any Schedules attached thereto, during the Maintenance Term, Licensor shall provide to Licensee at no additional charge all Modifications and New Releases to the Software, the schedule, nature, and scope of which shall be in the Licensor's sole discretion.

11.3 New Versions. Licensee may choose to license New Versions of the Software at the time of their availability under the terms and conditions of the Agreement and its attached Schedules, subject to the applicable pricing for such New Versions as set forth by Licensor in an appropriate supplement or Order executed by the parties. Licensee is under no obligation to license any such New Versions.

12. REINSTATEMENT

12.1 In the event Licensee discontinues Software maintenance and support via either termination or expiration of the contracted maintenance term, and subsequently opts to resume Software maintenance and support then the ordering activity shall pay to Licensor the applicable maintenance fee for the lapsed maintenance period.

WEBSENSE MAINTENANCED PRICING

PSE-Y-CP12-N	PREMIUM SUPPORT FOR EMAIL SECURITY GATEWAY, 12 MO, NEW 1001 + SEATS	15% of license costs	US	Websense
PSE-Y-CP12-R	PREMIUM SUPPORT FOR EMAIL SECURITY GATEWAY, 12 MO, RENEW 1001 + SEATS	15% of license costs	US	Websense
PSE-Y-CP36-N	PREMIUM SUPPORT FOR EMAIL SECURITY GATEWAY, 36 MO, NEW 1001 + SEATS	15% of license costs	US	Websense
PSE-Y-CP36-R	PREMIUM SUPPORT FOR EMAIL SECURITY GATEWAY, 36 MO, RENEW 1001 + SEATS	15% of license costs	US	Websense
PST-Y-CP12-N	PREMIUM SUPPORT FOR TRITON, 12 MO, NEW 1001+ SEATS	15% of total product cost	US	Websense
PST-Y-CP12-R	PREMIUM SUPPORT FOR TRITON, 12 MO, RENEW 1001+ SEATS	15% of total product cost	US	Websense
PST-Y-CP36-N	PREMIUM SUPPORT FOR TRITON, 36 MO, NEW 1001+ SEATS	15% of total product cost	US	Websense
PST-Y-CP36-R	PREMIUM SUPPORT FOR TRITON, 36 MO, RENEW 1001+ SEATS	15% of total product cost	US	Websense
PSA-Y-CP12-N	Websense Premium Support for Web Security Anywhere 12Mo. New License; 1001+ seats	15%of Total Product Cost	US	Websense
PSA-Y-CP12-R	Websense Premium Support for Web Security Anywhere 12Mo. Renew License; 1001+ seats	15%of Total Product Cost	US	Websense
PSA-Y-CP36-N	Websense Premium Support for Web Security Anywhere 36Mo. New License; 1001+ seats	15%of Total Product Cost	US	Websense
PSA-Y-CP36-R	Websense Premium Support for Web Security Anywhere 36Mo. Renew License; 1001+ seats	15%of Total Product Cost	US	Websense
PSD-Y-CP12-N	Websense Premium Support for Data Security 12 Mo.New, 1001+ seats	15% of Total Product Cost	US	Websense
PSD-Y-CP12-R	Websense Premium Support for Data Security 12 Mo.Renew, 1001+ seats	15% of Total Product Cost	US	Websense
PSD-Y-CP36-N	Websense Premium Support for Data Security 36Mo. New License, 1001+ Seats	15% of Total Product Cost	US	Websense
PSD-Y-CP36-R	Websense Premium Support for Data Security 36Mo. Renew License, 1001+ Seats	15% of Total Product Cost	US	Websense
PSW-Y-CP12-N	Premium Support - Web Filtering Products - 12 mo. New license 1001+ seats	15%of Total Product Cost	US	Websense
PSW-Y-CP12-R	Premium Support - Web Filtering Products - 12 mo. Renew license 1001+ seats	15%of Total Product Cost	US	Websense
PSW-Y-CP-36-N	Premium Support - Web Filtering Products - 36 mo. New license 1001+ seats	15%of Total Product Cost	US	Websense
PSW-Y-CP-36-R	Premium Support - Web Filtering Products - 36 mo. Renew license 1001+ seats	15%of Total Product Cost	US	Websense
WSGARD-X-XX-N	WSGA REDUNDANCY Keys - NEW Licenses	25% of license cost	US	Websense
WSGARD-X-XX-R	WSGA REDUNDANCY Keys - RENEWAL Licenses	25% of license cost	US	Websense
PSM-Y-CP12-N	Websense Premium Support Messaging - 12 Mo.New Licenses Seat bands P-R (1001+ seats)	15% of total product/license cost	US	Websense
PSM-Y-CP12-N	Websense Premium Support Messaging - 12 Mo.Renew Licenses Seat bands P-R (1001+ seats)	15% of total product/license cost	US	Websense
PSM-Y-CP12-N	Websense Premium Support Messaging - 36 Mo.New Licenses Seat bands P-R (1001+ seats)	15% of total product/license cost	US	Websense
PSM-Y-CP12-N	Websense Premium Support Messaging - 36 Mo.Renew Licenses Seat bands P-R (1001+ seats)	15% of total product/license cost	US	Websense

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF
TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL
INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE
(SPECIAL ITEM NUMBER 132-50)**

1.   SCOPE

a.   The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.

b.   The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.

*__Exception NetApp__***:** Training on **NetApp** products and services may be provided by Contractor at an Authorized Training Partner's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.

2.   ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

3.   TIME OF DELIVERY

The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity.

4.   CANCELLATION AND RESCHEDULING

a.   The ordering activity will notify the Contractor at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.

b.   In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.

c.   The ordering activity reserves the right to substitute one student for another up to the first day of class.

d.   In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

Exception NetApp: Training credits on **NetApp** products or services purchased or acquired by Ordering Activity shall expire without refund upon termination or renewal of this Contract.\

5. FOLLOW-UP SUPPORT

The Contractor agrees to provide each student with unlimited telephone support for a period of one (1) year from the completion of the training course. During this period, the student may contact the Contractor's instructors for refresher assistance and answers to related course curriculum questions.

Exception NetApp: Purchaser's of **NetApp** products should contact their **NetApp** sales representative or Contractor regarding any refresher assistance pertaining to previously purchased training.

6. PRICE FOR TRAINING

The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

7. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

8. FORMAT AND CONTENT OF TRAINING

a.   The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.

b.   **If applicable** For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.

c.   The Contractor shall provide each student with a Certificate of Training at the completion of each training course.

d.   The Contractor shall provide the following information for each training course offered:

(1)   The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);

(2)   The length of the course;

(3)   Mandatory and desirable prerequisites for student enrollment;

(4)   The minimum and maximum number of students per class;

(5)   The locations where the course is offered;

(6)   Class schedules; and

(7)   Price (per student, per class (if applicable)).

e.   For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part

31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.

9.	"NO CHARGE" TRAINING

Not available

Fortinet Training Course Descriptions:

Principles of Network Security and FortiGate Configurations:
Introduction to Fortinet Family of Products
Duration: 1 day or 4-hour web course
This course helps to prepare students for the following certification exam: "Fortinet Certified Network Security Associate (FCNSA)"

Designing and Implementing Secure Networks with FortiGates
Duration: 2 Days
This course helps to prepare students for the following certification exam: "Fortinet Certified Network Security Associate (FCNSA) Fortinet Certified Network Security Professional (FCNSP)"

Security Information Management using FortiManager and FortiLog
Duration: 2 days
This course helps to prepare students for the following certification exam: "Fortinet Certified Network and Security Professional (FCNSP)"

Fortinet training locations are offered all over the world, to include:
China, France, Germany, Italy, Japan, Poland, Sweden, Switzerland, Spain, UK, USA (Denver, Chicago, Sunnyvale, Boston, Minneapolis).

TERMS AND CONDITIONS APPLICABLE TO
ELECTRONIC-COMMERCE (EC) (SPECIAL IDENTIFICATION NUMBER 132-52)

1) SCOPE

a) The prices, terms and conditions stated under Special Item Number 132-52 Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.

b) The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

2) PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)

a) Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract .

b) The ordering activity must establish a maximum performance incentive price for the services and/or total solutions on individual orders or Blanket Purchase Agreements.

c) Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks. Incentives shall be based on objectively measurable tasks.

3) ORDER

a) Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

b) All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

4) PERFORMANCE OF SERVICES

a) The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.

b) The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.

c) The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.

d) Any Contractor travel required in the performance of EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

5) STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

    a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

        1) Cancel the stop-work order; or

        2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

    b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

    c) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

    d) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

    e) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

6) INSPECTION OF SERVICES

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time-and-Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.

7) RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

8) RESPONSIBILITIES OF THE ORDERING ACTIVITY

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite EC Services.

9) INDEPENDENT CONTRACTOR

All EC Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

10) ORGANIZATIONAL CONFLICTS OF INTEREST

a) Definitions.

"Contractor" means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

"Contractor and its affiliates" and "Contractor or its affiliates" refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An "Organizational conflict of interest" exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

b) To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

11) INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for EC services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

12) PAYMENTS

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (OCT 2008) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (OCT 2008) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

1) **The offeror;**

2) Subcontractors; and/or

3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

13) INCIDENTAL SUPPORT COSTS

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

14) APPROVAL OF SUBCONTRACTS

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

15) DESCRIPTION OF ELECTRONIC COMMERCE (EC) SERVICES AND PRICING

MX LOGIC Service Line Descriptions :
- MX Critical Defense – An ideal package for businesses that require advanced protection against inbound threats.
- Complete Security – The most comprehensive coverage bundle. Protects your company with award-winning managed services that combine email, web and message archiving.
    - Email Security and Archiving – Full email security that combines the MX Logic Stroage Control archiving service to protect the integrity of online communications.

USA COMMITMENT TO PROMOTE
SMALL BUSINESS PARTICIPATION
PROCUREMENT PROGRAMS

PREAMBLE

Arrow Enterprise Computing Solutions, Inc. provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

COMMITMENT

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts. To accelerate potential opportunities please contact Michael Garland at 202-288-3275.

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BEST VALUE
BLANKET PURCHASE AGREEMENT
FEDERAL SUPPLY SCHEDULE

</div>

(Insert Customer Name)

In the spirit of the Federal Acquisition Streamlining Act (ordering activity) and (Contractor) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s) _____.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures

_____   _____
Ordering Activity   Date   Contractor   Date

BPA NUMBER_____

(CUSTOMER NAME)
BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number(s)_____, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH (ordering activity):

(1)   The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:

MODEL NUMBER/PART NUMBER   *SPECIAL BPA DISCOUNT/PRICE

(2)   Delivery:

DESTINATION   DELIVERY SCHEDULES / DATES

(3)   The ordering activity estimates, but does not guarantee, that the volume of purchases through this agreement will be _____.

(4)   This BPA does not obligate any funds.

(5)   This BPA expires on _____ or at the end of the contract period, whichever is earlier.

(6)   The following office(s) is hereby authorized to place orders under this BPA:

OFFICE   POINT OF CONTACT

(7)   Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

(8)   Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

(a)   Name of Contractor;

(b)   Contract Number;

(c)   BPA Number;

(d)   Model Number or National Stock Number (NSN);

(e)   Purchase Order Number;

(f)   Date of Purchase;

(g)   Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and

(h)   Date of Shipment.

(9)   The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

(10)   The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

BASIC GUIDELINES FOR USING
"CONTRACTOR TEAM ARRANGEMENTS"

Federal Supply Schedule Contractors may use "Contractor Team Arrangements" (see FAR 9.6) to provide solutions when responding to a ordering activity requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions or the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- The customer identifies their requirements.

- Federal Supply Schedule Contractors may individually meet the customers needs, or -

- Federal Supply Schedule Contractors may individually submit a Schedules "Team Solution" to meet the customer's requirement.

- Customers make a best value selection.

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NOVELL MASTER LICENSE AGREEMENT

Master License Agreement

1. INTRODUCTION. This Master License Agreement ("MLA" or "Agreement") allows You (the customer entity signing this Agreement) to obtain software licenses and services from Novell through volume purchasing, which includes discounts and other benefits. The Effective Date of the MLA shall be the date this Agreement is signed by both parties. At that time, a contract number will be assigned to You. That contract number is personal and may not be disclosed to third parties, except to Your Novell-authorized reseller.

2. DEFINITIONS. Capitalized terms used in this Agreement are defined as follows:

2.1 Annual Period means the period beginning on the first day of the month following the Prime Customer's Effective Date and ending one year later, and each consecutive one-year period thereafter while the Agreement remains in effect.

2.2 Documentation means any user documentation and manuals (including electronic versions) provided by Novell with a Software product.

2.3 Price List means the price list for the MLA Program as published by Novell from time to time. The then-current Price List can be downloaded at http://www.novell.com/licensing/price.html or obtained from your local Novell office.

2.3.1 Volume Discount.
The GSA MLA suggested customer discount is determined by combining the total dollars spent within an Annual Period for licenses, Maintenance and optional services ordered by an enrolled GSA Customer and all of its respective sub-enrolled GSA Customers. Discounts may be adjusted annually. GSA MLA Discounts shall be based on net amounts spent, not list prices, in accordance with the following table:

All Novell Products and Maintenance	
Purchases (Net)	Suggested GSA Customer Discount
$250,000	38%
$1,750,000	43%
$3,000,000	48%

All Novell Premium Services and other optional services will have a suggested GSA Customer Discount of 2%.

Actual customer pricing is set by the authorized Novell GSA Scheduleholder.

2.4 Prime Customer means the first customer entity who enters into the MLA.

2.5 GSA Customer means those entities that are qualified to make GSA schedule purchases, and submit their own completed GSA MLA Enrollment forms, which are accepted by Novell. The completed GSA MLA Enrollment form binds the GSA Customer to the terms and conditions of the GSA MLA and allows the GSA Customer to select their Annual Period for Maintenance. Any/all subsidiaries or affiliates of an enrolled GSA Customer, such as separate ordering (shipping) locations, who wish to purchase under the enrolled GSA Customer must first submit to Novell a completed GSA MLA Sub-enrollment form to bind them to the terms and conditions and selections of the enrolled GSA Customer. Each sub-enrolled GSA Customer must adhere to the selections of the enrolled GSA Customer. Novell will assign each enrolled GSA Customer and sub-enrolled GSA Customer a unique MLA number to identify that customer for future GSA MLA transactions. A sample GSA MLA Enrollment form may be found in Attachment A and a sample GSA MLA Sub-enrollment form may be found in attachment B.

2.6 Software means the Novell software product licensed to You under this Agreement.

2.7 Update means a fix or compilation of fixes released by Novell to correct operation defects (program bugs) in the Software.

2.8 Upgrade means any new version of Novell Software which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal (e.g. for GroupWise 5.5 to 6.0). If a question arises as to whether a product offering is an Upgrade or a new product, Novell's opinion will prevail, provided that Novell treats the product offering the same for its end users generally.

3. LICENSING. The license grants and restrictions for the Software are contained in the End User License Agreement ("EULA") accompanying the Software. A copy of the EULA can be obtained at http://www.novell.com/licensing/eula/. Subject to Your payment of the applicable fees and compliance with this Agreement and the applicable EULA, Your licenses to use the Software will be perpetual, except as expressly provided otherwise (such as with beta products or products licensed on a subscription basis). To the extent of any conflict between the terms and conditions of this Agreement and the EULA, the terms and conditions of this Agreement will prevail. Ownership of Novell Software is held by Novell, Inc. and/or its licensors. Nothing in this Agreement or any related agreement shall restrict or limit or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under any applicable open source licenses to any open source code contained in the Novell Software or any third-party licenses for third-party code contained in the Novell Software.

4. Program Changes. The MLA Program Guide is available at http://www.novell.com/licensing/program_guide.html and forms an integral part of this Agreement. To the extent of any conflict between the terms of this Agreement and the Program Guide, the terms of this Agreement will prevail. Any changes will apply only to purchases made after the effective date of the changes. If any material change to the Program has an adverse effect on Your participation in it, You will be entitled to terminate Your Agreement by giving written notice to Novell within 30 days after receiving notice from Novell of such a change.

5. MAINTENANCE.

5.1 The Maintenance services described in this section (the provision of Upgrades, Updates and Premium Services) are a mandatory part of all Software licenses granted and owned under the MLA Program (including all installations of Linux Products), and Maintenance fees must be paid for such services on all Software licenses for as long as this Agreement remains in effect. During the period for which Maintenance is paid for a license, Novell will provide You with the following benefits for the license.

5.1.1 Upgrades and Updates. If Novell commercially releases any Upgrades and/or Updates during the period covered by Your Maintenance, Novell will make such Upgrades and/or Updates available to You within a reasonable period of time after they become commercially available. To obtain Updates and Upgrades, You will need to subscribe, at no extra cost, to Novell's Upgrade notification service available at http://www.novell.com/licensing/upgfulfill/. You will be entitled to install and use such Upgrades and/or Updates up to the number of licenses for which You have purchased Maintenance. Use of Upgrades is subject to the restrictions of the EULA provided with the Upgrade.

5.1.2 Premium Services. Novell will provide Premium Services as described in the then-current, region-specific, Premium Service Guide published on http://www.novell.com/services/premium/, the terms of which are incorporated into this Agreement. The level of Premium Services to which Customers are entitled during an Annual Period is determined by the accumulated Maintenance fees paid by all GSA Customers for that Annual Period. You may upgrade that level of service to suit Your needs by purchasing optional technical support services as provided in section 6 below.

5.2 Installed Base. Your installed base (Novell Software licenses available under the MLA Program which You purchased outside the MLA Program) must be transitioned into the MLA Program (be licensed under this Agreement at the product's most current version and receive Maintenance) through the purchase of Maintenance for the licenses, unless expressly allowed otherwise by Novell. You will pay Maintenance fees for products so transitioned for as long as this Agreement remains in effect. To transition licenses that are not at the current product version, You must upgrade, at the discounted Upgrade price, the licenses to the current version.

5.3 Ordering Maintenance. Unless the Price List allows You to purchase multi-year Maintenance for the relevant Software product, the Maintenance fee will be calculated and paid on an annual basis. All Maintenance fees are paid in advance. Each Maintenance period shall expire at the end of each Annual Period (or the end of the multi-year period), no matter when during such Annual Period the Maintenance was purchased. The initial Maintenance fee for a license will be calculated, on a pro rata basis, from the first day of the month following the earlier of: (a) submission of the purchase order or the Novell Order Form, or (b) making of a Software copy, through the end of the then-current Annual Period.

5.4 Ongoing Maintenance. While this Agreement remains in effect, You must order Maintenance on all product licenses by the start of the new Annual Period and pay the applicable Maintenance fee.

5.5 Refunds. If this Agreement is terminated because of Novell's breach under section 7.2 below, Novell will refund any Maintenance fees paid for the time period past the first day of the month following the termination date. Maintenance fees are not refundable unless expressly stated otherwise.

6. OPTIONAL SERVICES.

6.1 Support, Consulting or Education Services. Your optional purchase and Novell's delivery of Services, such as technical support, consulting or education ("Services") under the Agreement, are subject to the following terms, unless otherwise agreed in a separate agreement specifically covering those Services.

6.2 Statement of Work. The parties may choose to enter into a Statement of Work ("SOW") that describes the Services and may

cover items such as project scope, code, documentation, media and other objects ("Deliverables"). Any such SOW will be governed by this Agreement's terms.

6.3 Acceptance. Upon completion and delivery of the Services, You will have 30 days to notify Novell if the Services fail to comply with the relevant SOW. If Novell is not notified of any problems within this time period, the Services shall be deemed accepted by You.

6.4 License. Subject to payment of applicable fees for Services and Deliverables, Novell grants You a nonexclusive, nontransferable, worldwide, perpetual, royalty-free license to use, reproduce, display and distribute the Deliverables internally within Your organization. All proprietary rights notices must be faithfully reproduced and included on all copies. Except as expressly provided otherwise in this Section, Novell (and/or its licensors) retains on an exclusive basis all right, title and interest in and to any intellectual property developed, delivered and/or used by Novell in the performance of any Services.

6.5 SOW Continuance. If a SOW extends beyond the term of the Agreement, this section 6 and sections 8, 9.3, 9.5, and 10 of this Agreement will continue in effect solely with respect to such SOW.

7. ORDERING AND DELIVERABLES.

7.1 Orders. You must place an order for the appropriate number of Software licenses and associated Maintenance within thirty (30) days after installation. A valid order is a purchase order that is either signed by Your authorized representative or generated by Your automated ordering system. Novell's acceptance of an order does not suggest Novell's agreement with the accuracy of the quantities or other information set forth in the order. Novell reserves the right to invoice You in the absence of receiving a purchase order for fees otherwise owing under this Agreement, including for Maintenance fees at the beginning of each Annual Period. If You are unable to issue purchase orders, You must complete and sign a Novell MLA Order Form.

7.2 Price and Product Changes. Novell may revise the Price List at any time to (a) change the list prices for Software, Maintenance, and other services or deliverables, and (b) add or delete Software licenses or other services or deliverables available for purchase. Your list prices will not apply to third-party branded products, special promotions, or licenses and Maintenance invoiced in non-U.S. or non-EURO currency, and does not guarantee product availability for the full Term. The parties agree that the list prices (excluding third-party products and documentation that are not available directly from Novell) as stated in the then-current Novell MLA Price List upon execution of the MLA is not subject to price increase during the performance of the GSA Schedule contract except as specified in the original solicitation under the Economic Price Adjustment clause or the current term of the MLA.

7.3 Master Software. Novell will make available Master Software for the Software products ordered from the Price List. "Master Software" means master media available from Novell from which You may make copies to install the Novell Software up to the number of licenses granted.

7.4 Copying. You may install the Software from Master Software for Your internal use by Your employees (which may include contractors and consultants while performing work for your business), up to the number of licenses granted to You. You must reproduce the Master Software's serial numbers and all proprietary rights notices in any copies You make.

7.5 Payment. All fees will be due and payable in U.S. Dollars within 30 days from the date of invoice. However, for orders requesting shipment and billing to a country whose currency is the Euro or a currency required by the applicable Price List, the purchase orders must be issued, and the fees paid, in Euros or the required currency. Orders issued in response to quotes must correspond to the currency in which the quote was made. Payments will be made in accordance with the Prompt Payment Act.

7.6 Taxes. The MLA fees are exclusive of all applicable taxes. You will pay and bear the liability for taxes associated with MLA deliverables, including sales, use, excise, and added value taxes but excluding taxes based upon Novell's net income, capital, or gross receipts, or any withholding taxes imposed such as a withholding tax on a royalty payment made by You where such withholding is required by law. In the event You are required to withhold taxes, You will furnish Novell all required receipts and documentation substantiating such payment. If Novell is required by law to remit any tax or duty on Your behalf or for Your account upon delivery, You agree to reimburse Novell within 30 days after Novell notifies You in writing of such remittance. You will provide Novell with valid tax exemption certificates in advance of any remittance otherwise required to be made by Novell on Your behalf or for Your account where such certificates are applicable.

7.7 Self-Audits. You agree to submit to Novell a self-audit report at the end of each Annual Period. The self-audit must identify all Software use subject to a license, and the number of licenses of Software and Maintenance purchased. If Your self-audit information shows that You are using Software for which You are not licensed, or owe Maintenance, You must submit to Novell a purchase order for the licenses and Maintenance.

7.8 Formal Audits. During the Term of this Agreement and for two years afterward, You must keep complete and accurate records of all Software copying and use. During this period, Novell will have the right, at its expense and upon no fewer than 10 working days prior written notice, to audit Your use of the Software and Your related records and MLA payments. As part of such audit, Novell is entitled to obtain physical and electronic data concerning all Software usage at each of Your offices, regardless of the countries or regions in which Your offices are located (the audit may be at Your facilities or from a remote location, at Novell's option). An audit may be conducted either by Novell or by its authorized representative, will not interfere unreasonably with Your business activities, and will be conducted no more often than once per calendar year, unless a previous audit disclosed a material discrepancy. If such audit shows that You have understated Your actual use of the Novell Software or have otherwise underpaid amounts owing, You must immediately purchase from Novell sufficient licenses and Maintenance to support the actual use and copying and pay all amounts owing. If such audit shows that You have understated Your use of the Novell Software or underpaid amounts owing by more than five percent, You will also pay the reasonable expenses of the audit. Novell will use the information received during the audit solely for the purposes of this Agreement and will honor any applicable privacy/data protection laws and otherwise maintain the confidentiality of such information

7.8.1 You may request that the formal audit described above be carried out by an independent third party who must be an accountant or qualified auditor approved by Novell. Novell will not unreasonably withhold its approval. In such a case, the expense of the audit will be borne entirely by You. Subject to the provisions of this section, Novell will have the right to determine the audit scope and required audit testing and to review the audit work prior to finalization of the audit.

8. TERM AND TERMINATION.

8.1 Term. This Agreement will begin on the Effective Date and will remain in effect for two consecutive Annual Periods ("Term"), subject to earlier termination as stated below. GSA Customers shall be subject to the same Term as the Prime Customer, but may continue their memberships if, for whatever reason, the Prime Customer's membership terminates earlier. At the end of each Term, this Agreement will renew for an additional Term of two Annual Periods, unless either party gives notice in writing at least 30 days prior to the end of the then-current Term that it does not wish to renew, or unless this Agreement terminated earlier as provided below.

8.2 Termination for Cause. Either party may terminate this Agreement (and Your MLA membership) upon written notice for the substantial breach by the other party of any material term, if such breach is not cured within 30 days following receipt of written notice of breach from the non-breaching party.

8.3 Effect of Termination. Upon termination of this Agreement for any reason, Your right to acquire MLA licenses or Maintenance will immediately terminate. However, unless Your membership is terminated by reason of Your violation of Novell's intellectual property rights, Your right to continue to use any perpetual licenses will not be affected and You may keep and use Your Master Software to install licenses that You owned prior to termination, including any Upgrades and Updates to which You were entitled under Maintenance.

9. INTELLECTUAL PROPERTY INDEMNIFICATION.

9.1 Scope. Novell will defend any claim brought against You by a third party to the extent it is based on an allegation that a Novell Software product or service deliverable infringes such third-party's patent, copyright, or trademark, or misappropriates such third party's trade secrets, under the laws of the country in which You take delivery of the Software or deliverable. Novell will pay any damages, costs, and expenses finally awarded (or agreed to by settlement) for any such claim. You must promptly notify Novell of the claim, give Novell control of the defense and related settlement negotiations, and provide Novell with the reasonable assistance (for which Novell shall pay Your reasonable out-of-pocket costs) in defending the claim. If You desire separate legal representation in any such action, You will be responsible for the costs and fees of Your separate counsel.

9.2 Remedies. If a Novell Software product or service deliverable is held to infringe and its use is prohibited or if, in Novell's reasonable opinion, is likely to become the subject of an infringement claim, You will permit Novell, at Novell's option and expense, to (a) procure for you the right to continue to use the Software or deliverable, or (b) replace or modify it so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon Your return of the infringing Software or deliverable, refund to You the amount paid for the Software or deliverable.

9.3 Exceptions. Novell will have no obligation of defense or indemnity to the extent the infringement claim arises from (a) Novell's compliance with Your designs, specifications or instructions, (b) use of other than the Software's current release, if the infringement would have been avoided by use of the current release and if the infringement occurs more than 90 days after Novell notifies You that a previous release may infringe, (c) a modification of the Software or deliverable not requested or authorized in writing by Novell, (d) its use or combination with non-Novell software, equipment, or data, other than

as specified in the Documentation or otherwise approved by Novell in writing, (e) the furnishing to You of any information, service, or technical support by a third party, (f) non-licensed use of the Software or deliverable, or (g) any Linux-based Software or Software for which Novell does not charge a license fee ("Linux Product"), unless You are current on Maintenance for all installations of the Linux Product on the date the infringement claim is tendered to Novell.

9.4 Indemnification Limitation. To the extent allowed by applicable law, Novell's aggregate liability for any infringement claim is limited to the lesser of $U.S. 1.5 million or twice the amount paid by You for the Software or deliverable (which amount includes Maintenance fees for Linux Product) giving rise to the claim. This limit does not apply to expenses incurred by Novell in defending the claim.

9.5 Exclusive Remedy. This section 8 states the exclusive obligation of Novell to Customer regarding any claim of infringement or misappropriation of any third party's intellectual property rights.

10. LIMITED WARRANTY.

10.1 Software. Novell warrants that the Software (including Upgrades) will conform substantially to the specifications in the Documentation, provided: (a) the Software is not modified by anyone other than Novell, unless authorized by Novell in writing; (b) You notify Novell in writing of the nonconformity within 90 days after You first acquire a licensed copy of the Software version; and (c) the Software is installed in a compatible environment. In this section, "conform substantially" means that the Software conforms to the vast majority of all specifications in the Documentation. Novell's only obligation under this warranty, at its option, is to either cause the Software to conform substantially with its specifications or to refund to You the amount paid to license such Software (or, for an Upgrade, the annual Maintenance fee entitling You to the Upgrade) upon Your return of all the Software. In the event of a refund, Your license to use the Software will automatically expire.

10.2 Media and Documentation. Novell warrants that if either the media or the Documentation provided by Novell is in a damaged or physically defective condition at the time of delivery to You and if it is returned to Novell (postage prepaid) within 90 days of delivery, Novell will provide You replacements at no charge.

10.3 Services. Novell warrants that any services purchased under this Agreement will be supplied in a professional manner in accordance with generally accepted industry standards. As files may be altered or damaged in the course of Novell providing technical services, You agree to take appropriate measures to isolate and back up Your systems. This warranty will be effective for 90 days following acceptance of the services. Upon any breach of this warranty, Novell's only obligation, at its option, is to either correct the services so that they comply with this warranty or refund the amount You paid to Novell for the services.

10.4 Non-Novell Products. Novell does not warrant non-Novell products. Any such products are provided on an "AS IS" basis. Any technical or warranty service for non-Novell products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.

10.5 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THESE LIMITED WARRANTY SUBSECTIONS, NOVELL MAKES NO WARRANTY OR REPRESENTATIONS REGARDING ANY SOFTWARE OR SERVICES. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOVELL DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES OR CONDITIONS, INCLUDING IMPLIED WARRANTIES OF GOOD TITLE AND NON-INFRINGEMENT. NOVELL DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL BE WITHOUT DEFECT OR ERROR, SATISFY YOUR REQUIREMENTS, OR PROVIDE UNINTERRUPTED USE OF THE SOFTWARE.

Customer's implied warranties of merchantability and fitness for a particular purpose, as contained in FAR 12.404(a), shall be available under this Agreement, subject to the limited remedies described in FAR 52.212-4(a) being exercised within the ninety (90) day time period set forth under sections 10.1 (software performance), 10.2 (media defects), and 10.3 (services) of this Agreement. "Conform to the requirements of the contract," as used in FAR 52.212-4(a), shall have reference to the user documentation accompanying the Software.

11. LIABILITY LIMITATIONS.

11.1 Indirect Damages. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NEITHER NOVELL NOR CUSTOMER WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHETHER UNDER CONTRACT OR IN TORT (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF BUSINESS, LOSS OF PROFITS AND LOSS OF USE OF DATA) RELATED TO OR ARISING OUT OF THIS AGREEMENT. EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO VIOLATIONS BY EITHER PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

11.2 Direct Damages. Novell's liability for damages of any type arising out of or related to this Agreement shall be limited to the greater of two (2) times the actual amounts paid by You for the licenses, service, or deliverable in question, or US$100,000. This subsection does not apply to Novell's liability for intellectual property indemnification described above, nor does it apply to any damages for personal injury or tangible property caused by the negligence or willful default of Novell.

12. GENERAL.

12.1 Choice of Law. The Agreement will be governed by the substantive laws of the State of Utah without regard to its choice of law provisions, unless the laws of the state, province, or country of Your domicile require otherwise, in which case the laws so required will govern.

12.1.1 However, if Your principal residence is in (a) a member state of the European Union or (b) a member state of the European Free Trade Association (c) the Republic of South Africa, or (d) Canada, the governing law is that of the country of Your principal residence (and for Canadian customers, the law of the Province of Ontario). If Your principal residence is in any other country in Europe the applicable law will be the law of the Federal Republic of Germany. If Your principal residence in the Middle-East or Africa (except South Africa), the applicable law will be the law of England. To the extent allowed by applicable law, the terms of the United Nations Convention on the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the relationship.

12.1.2 Each party will, at its own expense, comply with any applicable law, statute, administrative order or regulation. An action at law under this Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this Section 11. If a party initiates legal proceedings related to this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees.

12.2 Assignment. Neither party may transfer or assign any right or obligation set forth in this Agreement without the prior written consent of the other. Neither party will unreasonably withhold or delay its consent to an assignment of the Agreement by the other party to another entity in the same group of companies. Either party may, with written notice to the other party, assign the Agreement to the surviving entity in the case of a merger or acquisition.

12.3 Confidentiality Obligations. The receiving party of Confidential Information will exercise reasonable care to protect any Confidential Information from unauthorized disclosure or use. The receiving party may disclose Confidential Information only to its employees or agents with a need to know such information and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. "Confidential Information" means the terms of this Agreement and any other information that (i) if disclosed in tangible form, is marked in writing as confidential, or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential." Confidential Information will not include information (a) already in the receiving party's possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; or (f) required to be disclosed by law, regulation, or court order. These confidentiality obligations will survive three (3) years after expiration or termination of this Agreement. Novell retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any services to You.

12.4 Publicity. You agree that Novell may use Your participation in the MLA Program as a commercial reference unless You otherwise inform Novell in writing.

12.5 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to its subject matter. This Agreement supersedes all prior and contemporaneous agreements, proposals and statements on this subject matter. Except as otherwise stated herein, this Agreement may only be modified in a writing signed by authorized representatives of each party. Purchase order terms will not modify the Agreement unless the parties agree otherwise in writing.

12.6 Severability/Waiver. If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

12.7 Notices. Notices to a party must be in writing and sent to the party's address on the Membership Form or such other address as a party may provide in writing. Notices may be delivered in a format reasonably chosen by the notifying party.

12.8 Force Majeure. Neither party will be liable for delay or failure to perform that arises out of causes beyond the reasonable control and without the fault or negligence of such party. A party will give prompt notice of any condition likely to cause any delay or default.
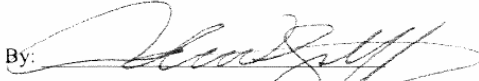
12.9 Survival. The provisions of this Agreement, which by their nature extend beyond termination of the Agreement, will survive termination of the Agreement.

12.10 Intellectual Property Rights/Remedies. Nothing in this Agreement waives or limits extra-contractual rights or remedies available to Novell to protect its rights in the Software, including those available under U.S. copyright law, international treaties, or national copyright and intellectual property laws of the countries in which You may use the Software.

12.11 Export Compliance. Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or classification to export, re export or import deliverables. The parties agree not to export or re export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist countries as specified in the U.S. export laws. The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses. Please consult the Bureau of Industry and Security web page: www.bis.doc.gov before exporting Novell products from the U.S., and also refer to: www.novell.com/info/exports/for more information on exporting Novell software. Upon request, Novell will provide you specific information regarding applicable restrictions. However, Novell assumes no responsibility for your failure to obtain any necessary export approvals.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this MLA as of the day and year first set forth above.

NOVELL INCORPORATED ("NOVELL")

By: _____

Name: ___Andrew T. Wagstaff___

Title: ___Contract Manager___

Date: ___April 24, 2008___

UNITED STATES GENERAL SERVICES ADMINISTRATION

By: _____

Name: _David E. O Neill_

Title: _Contracting officer_

Date: _April 30, 2008_

ATTACHMENT A
ENROLLMENT APPLICATION
NOVELL MASTER LICENSE AGREEMENT
GSA Schedule Purchases

1.   Purpose Of Enrollment Application. Novell and GSA (Customer) have entered into the Master License Agreement (MLA), incorporated into the Novell authorized GSA Scheduleholder(s) GSA Schedule, for the purpose of providing GSA Schedule Customers with a Customer license to use Novell products. The purpose of this Enrollment Application is to extend the pricing and program of Novell's GSA Master License Agreement to government organizations authorized by GSA and Congress to purchase from the GSA Schedule contracts. This Enrollment Application incorporates the terms and conditions of the MLA.

2.   Definitions. Terms with the initial letter capitalized will have the same meaning as defined in the MLA, unless otherwise defined in this Enrollment Application.

3.   MLA Terms
.
By signing below, the undersigned "Customer Organization" hereby represents, warrants, and agrees as follows:

A.   Customer Organization has read the MLA between Novell and the Customer, understands its terms and conditions, and agrees to be legally bound by the MLA. Customer Organization shall be directly responsible to Novell for the performance of its obligations under the MLA and shall be liable for any and all claims and remedies, whether at law or in equity, that may be available to Novell by reason of Customer Organization's breach of any such obligations.

B.   In the event Customer Organization breaches any of its obligations herein, Novell may, without waiving or otherwise limiting any other remedies available to Novell under the MLA or under applicable law, terminate this Enrollment Application in accordance with the termination provisions of the GSA MLA. This Enrollment Application and all rights arising hereunder shall in any event terminate upon expiration or termination of the MLA.

C.   In the event of conflict between the MLA terms and conditions and this Enrollment Application, the terms of the Enrollment Application shall prevail.

4.   Volume Discount. Customer Organization's Suggested Volume Discount for product licenses and product Maintenance shall be based on the total amount of purchases by Customer Organization within a given Annual Period in accordance with sections 2.3.1 and 7.2 of the MLA. Novell authorized GSA Scheduleholder sets actual price.

Novell Consulting and Novell Premium Services are discounted at **2%** from the standard list prices in accordance with the MLA.

5.   EULA. License grants and restrictions for the Software are contained in the most current version of the product End User License Agreement ("EULA"). EULAs may be viewed at: http://www.novell.com/licensing/eula.

6.   Records and Audits. The Customer Organization agrees to maintain records and conduct self-audits as required under MLA Section 7 and understands that it may be subject to a formal audit by Novell under the terms and conditions of MLA Section 7.8.

Within 15 days after the end of each Annual Period, Fulfillment Agent will prepare and deliver to the Customer an Account History showing MLA orders and/or payments made by Customer through Fulfillment Agent, and any MLA Software copies or installations made by Fulfillment Agent.

In addition to the Customer's MLA Self Audit obligations, Fulfillment Agent agrees to submit to Customer the Account History, and Customer agrees to sign the Account History verifying whether or not Fulfillment Agent's Account History accurately describes Customer's orders placed through the Fulfillment Agent. Fulfillment Agent will submit the completed Account History and verification to Novell.

7.   Orders/Fulfillment Agent. Despite any language in the MLA to the contrary, Customer Organization may not order and receive MLA products from more than one shipping/billing location, as identified in the Customer Organization Information "Ship To Information" below, without first submitting a GSA MLA Sub-enrollment Form for each shipping location. Customer Organization and its sub-enrollees must submit MLA orders through a Novell-authorized GSA MLA Scheduleholder (MLA Fulfillment Agent) to fulfill MLA orders for the duration of the Enrollment Term.

8.   Maintenance Period. For the purposes of determining the Maintenance coverage periods for Customer (and not for determining the termination date of the MLA), "Annual Period" means the period commencing on _____ and ending one year thereafter, on _____, and each consecutive one-year period thereafter during the Enrollment term. **If no Annual Period is specified, the default is the Federal fiscal year of October 1 through September 30.** If Customer's Annual Period extends past the date when the underlying MLA or Enrollment expires, the MLA shall continue as to Customer only until the Maintenance Period for which Customer has paid expires. All Maintenance fees shall be calculated based on the Annual Period.

9.   Term. Customer Organization's term will coincide with the term set forth in the GSA MLA, and will automatically renew for additional terms until either party gives written notice otherwise at least sixty days prior to the end of the then-current MLA term.

10.   Authority.   This Enrollment Application is executed by Customer Organization's duly authorized representative.

Customer Organization

Organization Name _____

Signed _____

Name _____

Title_____

Date _____

Novell, Inc.

Signed _____

Name _____

Title_____

Date _____

ENROLLMENT APPLICATION
CUSTOMER ORGANIZATION INFORMATION
GSA SCHEDULE

Customer Information (Required)

Customer Name on MLA:_____

MLA Contract #:_____

Enrolling Organization Name:_____

Enrolling Org. POC/Attention: _____

Address: _____

_____

Phone No.: _____

Fax No. _____

Email: _____

Ship To Information (Required):

Organization Name:_____

Attention:_____

Address:_____

_____

Country:_____

Phone No.:_____

Fax No. : _____

Installation Location (Required):

Address:_____

_____

Country:_____

Phone No.:_____

Fax No. : _____

Invoice To Information (Required):

Organization Name:_____

Attention:_____

Address:_____

_____

Country:_____

Phone No.:_____

Fax No. :_____

Accounts Payable Contact (Required):

Name:_____

Phone No.:_____

Fax No.:_____

Purchasing Agent Contact (Required):

Name:_____

Phone No.:_____

Fax No.:_____

Local Novell Representative (Required):

Name:_____

Phone No.:_____

Fax No.:_____

ATTACHMENT B

Novell GSA MLA Sub-enrollment Form

Sub-enrolling Organization Customer Information (Required)	
Purchase Order Number:	
Parent Organization Name on MLA:	
MLA Contract #:	
Sub-enrolling Organization Name:	
Address:	
Phone No.	
Fax No.	
Invoice Information (Required)	
Organization Name:	
Attention:	
Address:	
Phone No.	
Fax No.	
Ship To Information (Required):	
Organization Name:	
Attention:	
Address:	
Email Address:	
Phone No.	
Fax No.	
Installation Location (Required):	
Contact Name:	
Address:	
Phone No.	
Fax No.	
Local Novell Representative	
Phone No.	

By signing below, Customer certifies that it has read and understands the Novell GSA Master License Agreement (MLA) as entered into by its parent organization by enrollment and agrees to be bound by the MLA's terms and conditions for all Purchase Orders submitted against this Agreement.

Sub-enrollment Customer Signature: _____

Print Name:_____ Date:_____

Title:_____

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NETAPP END USER LICENSE AGREEMENT

END USER LICENSE AGREEMENT FOR NETAPP, INC. SOFTWARE

IMPORTANT – READ CAREFULLY: This End User License Agreement ("EULA") is a legal agreement between you either as an individual or as an authorized representative of a business entity (hereafter referred to as "You" and/or "Your"), and NetApp, Inc. ("NetApp"). NetApp is willing to license to You the NetApp software product accompanying this EULA, which includes, without limitation, computer software features, protocols, authorized updates and upgrades or other supplements to the software, images, music, text and/or animations incorporated into the software, media, printed materials, or online or electronic documentation, provided by NetApp or made available for download (collectively referred to as the "Software"). Your download, installation and/or use of the Software constitutes acceptance of all of the terms stated herein. If You do not agree with all of these terms, You must promptly return the Software to NetApp or the authorized reseller from which you obtained the Software.

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1.1   Additional License Terms. This Software may include SnapManager® for Oracle® and/or SnapManager® for SAP®, for which the following additional license terms apply: If You have acquired a "host-based" license the Software is licensed to You to manage any database mounted to a single host. If You have acquired a "system-based" license the Software is licensed to You to manage any database that stores its data on a System regardless of the host on which it is mounted. If You have licensed SnapManager for Oracle or SnapManager for SAP the licensed unit of Software is one (1) license per HA pair and two (2) licenses per HA pair.

2.   License Restrictions.

2.1   Standard Use Restrictions. For Software licensed to You for use on a storage controller or cluster, the license is for a specific controller or cluster identified by a unique serial number. Subject to any express restrictions contained within Your Software Entitlement or Documentation, You shall not nor shall You allow any third party to: (a) decompile, disassemble, decrypt, extract, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas, algorithms, or file formats of, or of any

components used in the Software by any means whatever; (b) remove or conceal any product identification, copyright, patent or other notices contained in or on the Software or Documentation; (c) electronically transmit the Software from one computer to another or over a network; (d) use any "locked" or restricted feature, function, service, application, protocol, operation, or capability without first purchasing the applicable license(s) and/or obtaining a valid license enablement key from NetApp, even if such feature, function, service, application, protocol, operation or capability is technically achievable without a key; (e) sell, lease, rent, lend, sublicense, distribute or otherwise transfer in whole or in part the Software or the applicable license enablement key to another party or to a different storage controller or cluster; or (f) modify the Software, incorporate it into or with other software, or create a derivative work of any part of the Software. Your modification of the Software will breach this EULA, and such derivative work is and shall be owned entirely by NetApp or its licensors; You hereby assign and agree to assign to NetApp or the licensor of the Software all right, title and interest in and to said derivative work. You acknowledge that the Software is not designed, licensed or intended for use in the design, construction, operation or maintenance of any nuclear facility, aircraft operation, air traffic control or life support system. NetApp disclaims any express or implied warranty of fitness for such uses. If You use the Software for such applications, You agree to indemnify, defend and hold NetApp and its licensors harmless from all claims, actions, losses, liabilities, damages, costs and expenses (including attorney fees) arising out of or relating to such prohibited uses.

You agree to use Software which NetApp has embedded in the NetApp equipment ("Embedded Software") solely as embedded in, and for execution on, NetApp equipment You originally purchased from NetApp or its authorized resellers.

2.2   Capacity-Based Licensing Restriction. In addition to the Standard Use restrictions described above, any Software licensed on a capacity basis or as capacity based units requires that NetApp's AutoSupport feature be enabled at all times. Unauthorized disabling of AutoSupport where Software is licensed on a capacity basis or as capacity based units shall void NetApp's support obligations and You shall be in breach of this EULA and your rights under this EULA will terminate in accordance with Section 6 below.

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2.4   Benchmark Results. The results of any benchmark or comparison tests run on Software is considered to be the confidential information of NetApp. You may not publish or provide the results of any benchmark or comparison tests run on Software to any third party without the prior written consent of NetApp.

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6.	Termination. This EULA is effective until terminated. NetApp may terminate this EULA immediately and without notice if You fail to comply with any term of this EULA. Termination of this EULA shall not relieve You from Your obligations to immediately pay NetApp any sums owed hereunder or under any other agreement with NetApp. Upon termination, all rights to use the Software will cease, and You shall promptly destroy the original and all copies of the Software and any license enablement keys in Your possession or under Your control. Termination is not an exclusive remedy and all other remedies otherwise entitled by law shall remain. Sections 2, 3, 4, 5, 7 through 11 shall survive termination of this EULA.

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Base Software EULA v10-19-09

END USER LICENSE AGREEMENT FOR EMC SOFTWARE

End User Software License Agreement
For Use with GSA Schedule 70

_____, located at _____
("Licensor"),   and   _____,   with   a   principal   place   of   business   at
_____ ("Customer"), agree that this End User Software License
Agreement ("EULA") shall govern any Software listed on an Order accepted by Licensor after the date of last signature below (the "Effective Date").

1. DEFINITIONS.

A. "Documentation" means the then-current, generally available, written user manuals and online help and guides for Products provided by LICENSOR.

B. "Products" mean **"Equipment"** (which is the hardware delivered by LICENSOR to Customer) and/or **"Software"** (which is any programming code provided by LICENSOR to Customer as a standard product, also including microcode, firmware and operating system software).

C. "Product Notice" means the notice by which LICENSOR informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an LICENSOR quote, otherwise in writing and/or a posting on the applicable LICENSOR website, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp

D. "Software Release" means any subsequent version of Software provided by LICENSOR after initial Delivery of Software, but does not mean a new Product.

E. "Eligible Ordering Activities" are those agencies and activities authorized under 552.238-78 Scope of Contract (Eligible Ordering Activities) and GSA Order ADM 4800.2G, February 16, 2011, to use GSA Schedule 70. An Eligible Ordering Activity is a "Customer". Eligible Ordering Activities that are Executive agencies (as defined in FAR Subpart 2.1), including non-appropriated fund activities as prescribed in 41 CFR 101-26.000, are referred to as "Executive Customers". All other Eligible Ordering Activities are referred to as "Other Customers".

2. LICENSE TERMS.

A. General License Grant. LICENSOR grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Customer's internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer's use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the LICENSOR quote, be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable.

B. Licensing Models. Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are stated in the Product Notice and/or LICENSOR quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain equipment, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.

C. License Restrictions. All Software licenses granted herein are for use of object code only. Customer is permitted to copy the Software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation insofar as reasonably necessary in connection with Customer's authorized internal use of the Software. Customer shall not, without LICENSOR's prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of LICENSOR Products performed by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer's employees or contractors; or (iv) transfer Software to an Affiliate or a third party.

D. Software Releases. Software Releases shall be subject to the license terms applicable to Software.

E. Audit Rights. LICENSOR shall have the right to audit Customer's usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by LICENSOR and shall not unreasonably interfere with Customer's business activities. Customer will provide LICENSOR with the support required to perform such audit and will, without prejudice to other rights of LICENSOR, address any non-compliant situations identified by the audit by forthwith procuring additional licenses. If the Customer is an Executive Customer non-compliant situations are subject to paragraph 2.F. Disputes.

F. Disputes. For a EULA with an Executive Customer LICENSOR shall comply with FAR 52.212-4 (d) Disputes for requests for equitable adjustment, claims, appeals or actions arising under this EULA, including Executive Customer breaches of the terms governing use of the Software. EULA's with Other Customers are not subject FAR 52.212-4 (d) Disputes. .

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written consent, nor shall Customer permit any third party to do the same.

H. Other License Terms. If a particular Product is provided with a "clickwrap" agreement included as part of the installation and/or download process, or a "shrinkwrap" agreement included in the packaging for the Product, the terms of such clickwrap or shrinkwrap agreement shall, in case of conflict with the terms of this EULA, (i) prevail with regard to Products for which LICENSOR is not the licensor; and (ii) not prevail with regard to Products for which LICENSOR is the licensor.

3. PRODUCT WARRANTY.

A. Software Warranty. LICENSOR warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. LICENSOR does not warrant that the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer's requirements, except if expressly warranted by LICENSOR in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.

B. Warranty Duration. Unless otherwise stated on the LICENSOR quote, the warranty period for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery. Software warranty commences upon Delivery of the media or the date Customer is notified of electronic availability, as applicable. Equipment upgrades are warranted from Delivery until the end of the warranty period for the Equipment into which such upgrades are installed.

C. Customer Remedies. LICENSOR's entire liability and Customer's exclusive remedies under the warranties described in this section shall be for LICENSOR, at its option, to remedy the non-compliance or to replace the affected Product. If LICENSOR is unable to effect such within a reasonable time, then LICENSOR shall refund the amount paid by Customer for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to LICENSOR. All replaced Products or portions thereof shall be returned to and become the property of LICENSOR. If such replacement is not so returned, Customer shall pay LICENSOR's then current spare parts price therefore. If the Customer is an Executive Customer, LICENSOR claims for non-returned Products are subject to paragraph 2.F. Disputes.

LICENSOR shall have no liability hereunder after expiration of the applicable warranty period.

D. Warranty Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond LICENSOR's control; (iii) installation, operation or use not in accordance with LICENSOR's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than LICENSOR or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. LICENSOR has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without LICENSOR's consent or whose original identification marks have been altered or removed. Removal or disablement of Equipment's remote support capabilities during the warranty period requires reasonable notice to LICENSOR. Such removal or disablement, or improper use or failure to use applicable Customer Support Tools shall be subject to a surcharge in accordance with LICENSOR's then current standard rates.

E. No Further Warranties. Except for the warranty set forth in this EULA, LICENSOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

4. INDEMNITY.

LICENSOR shall (i) defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by LICENSOR. The foregoing obligations are subject to the following: Customer (a) notifies LICENSOR promptly in writing of such claim; (b)(1) if Customer is an entity for which the Department of Justice (DoJ) has the statutory right to exercise sole control over the defense, DoJ shall have that right, provided that DoJ shall consult appropriately with LICENSOR and/or EMC Corporation, and LICENSOR and/or EMC Corporation shall have the right to intervene through its own counsel and at its own expense; (b)(2) for all other Customers, Customer grants LICENSOR sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an LICENSOR request for assistance; and (d) is not in material breach of this EULA. Should any such Product or Service become, or in LICENSOR's opinion be likely to become, the subject of such a claim, LICENSOR may, at its option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; (3) request return of the Product and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life for Products; or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. LICENSOR shall have no liability to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of a Product or Service with third party products or services; (B) use for a purpose or in a manner for which the Product or Service was not designed; (C) any modification made by any person other than LICENSOR or its authorized representatives; (D) any modifications to a Product or Service made by LICENSOR pursuant to Customer's specific instructions; (E) any technology owned or licensed by Customer from third parties; or (F) use of any older version of the Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LICENSOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

5. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 4 ABOVE, LICENSOR'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY LICENSOR'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO LICENSOR FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTION 4 ABOVE, NEITHER CUSTOMER NOR LICENSOR SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

C. Regular Back-ups. As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before LICENSOR performs any remedial, upgrade or other works on Customer's production systems. To the extent LICENSOR's liability for loss of data is not anyway excluded under this EULA, LICENSOR shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

D. Limitation Period. Unless otherwise required by applicable law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.]

E. Suppliers. The foregoing limitations shall also apply in favor of LICENSOR's suppliers.

6. EXPORT CONTROL. The Products, Services and the technology included therein provided under this EULA are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Products and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such Products and technology included therein outside of the United States or other countries (collectively, "Export Laws"). Customer shall comply with all Export Laws. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

7. TERM AND TERMINATION. This EULA takes effect on the Effective Date and continues until terminated in accordance with the following:

A. EULAs with Executive Customers may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4 (l).

B. For EULAs with Other Customers LICENSOR may terminate licenses for cause if Customer breaches the terms governing use of the Software and fails to cure within thirty (30) days after receipt of LICENSOR's written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to LICENSOR. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive.

8. MISCELLANEOUS.

A. References. LICENSOR may identify Customer for reference purposes unless and until Customer expressly objects in writing.

B. Notices. Any notices hereunder shall be in writing.

C. Entire Agreement. This EULA and each purchase order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in writing. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this EULA and/or LICENSOR quote, shall be null and void and of no legal force or effect, even if LICENSOR does not expressly reject to such terms when accepting a purchase order or similar document provided by Customer; however, terms in such document deviating from a LICENSOR quote do become binding upon the parties when expressly accepted by LICENSOR in writing in an order acknowledgement or similar document.

D. Force Majeure. Except for payment of fees, neither party shall be liable under this EULA because of a failure or delay in performing its obligations due to any force majeure event, including strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

E. Assignment. Customer shall not assign this EULA or a purchase order or any right herein or delegate any performance without LICENSOR's prior written consent, which consent shall not be unreasonably withheld. LICENSOR may use LICENSOR Affiliates or other sufficiently qualified subcontractors to provide Services to Customer, provided that LICENSOR shall remain responsible to Customer for the performance thereof.

F. Governing Law. To the extent not preempted by federal law or regulation, this EULA is governed by the laws of the Commonwealth of Massachusetts. To the extent permitted by law, the courts of the Commonwealth of Massachusetts shall be exclusively competent to rule on disputes arising out of or in connection with this EULA and all purchase orders. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

G. Waiver. No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

IN WITNESS WHEREOF, the parties have caused this Software License Agreement to be signed on the respective dates indicated below.

Licensor:_____   Licensee:_____

By:_____   By:_____

Name (Print):_____   Name (Print):_____

Title:_____   Title:_____

Date:_____   Date:_____

PRICING

Please See Attached CD